THE LAMBDA UPDATE

THE NEWSLETTER OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND SPRING/SUMMER 1998

Coretta Scott King Cheers Lambda

- A Gross Indecency: Arkansas Sodomy Law
- Supporting Gay Students in Utah
- No to HIV Names Reporting!

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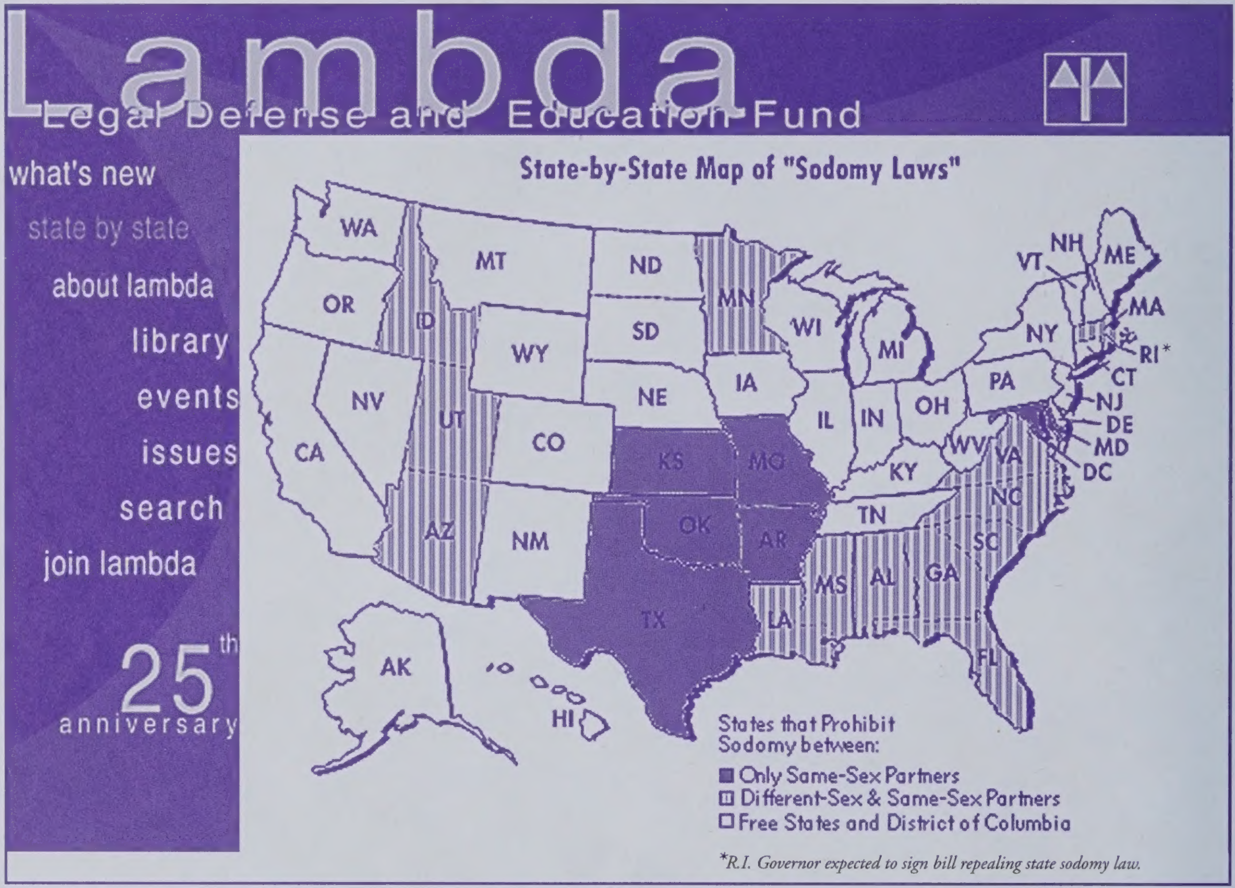
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State-by-State Map of "Sodomy Laws"

States that Prohibit Sodomy between:

- ■ Only Same-Sex Partners
- ▥ Different-Sex & Same-Sex Partners
- ☐ Free States and District of Columbia

**R.I. Governor expected to sign bill repealing state sodomy law.*

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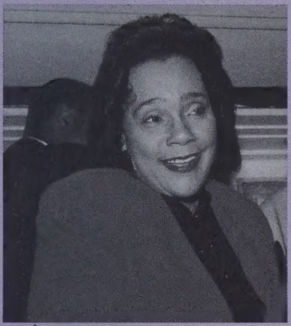
Kristine Wolff 1998

14 Coretta Scott King Delivers Annual Bon Foster Civil Rights Lecture

Coretta Scott King Cover Photo: Kristine Wolff

THE LAMBDA UPDATE

The Newsletter of Lambda Legal Defense and Education Fund

Volume 15 Number 2

Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men and people with HIV/AIDS, through impact litigation, education and public policy work. Founded in 1973, Lambda is not-for-profit and tax-exempt.

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Lambda Update Editor: Deirdre M. Reznik
Design: FADesign, Inc., NYC
Printing: Darbert Press, NYC
ISSN: 1058-949X
Printed on recycled paper
Entire contents © 1998 by Lambda Legal Defense and Education Fund, Inc.

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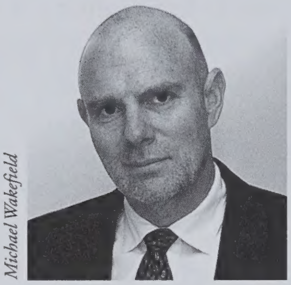
by Kevin M. Cathcart


Michael Wakefield

Kevin M. Cathcart

As we enter lesbian and gay pride month, Lambda is busy working and celebrating across the country. Lambda contingents have already marched in parades in Long Beach, California; Asheville, North Carolina; Brooklyn, New York; and Birmingham, Alabama. We are building up to a big day at the end of the month with simultaneous marches in Los Angeles, San Francisco, Chicago, Atlanta, and New York!

Lambda's Pride activities are interspersed with Lambda 25 celebrations, held so far in Atlanta, Miami, Detroit, San Francisco, Dallas, Chicago, Philadelphia, New Jersey, and New York. With our anniversary year already half over, we have celebrated with thousands of Lambda's friends from across the country, marking our victories, updating people on our current work, and thanking many of the people who make Lambda's work possible.

Our work proceeds at an ever faster pace! As you will read in the pages ahead, we are awaiting decisions from the Second Circuit Court of Appeals in *Able*, from the United States Supreme Court on our petition for *certiorari* in *Cincinnati* and on our friend-of-the-court effort in *Bragdon*, from the New Jersey Supreme Court on the Boy Scouts case, and from Hawaii, of course, on marriage. We have new challenges before the courts of Utah, Arkansas, and Georgia on youth and sodomy reform, and family law and HIV-related cases in courts in every corner of the country.

At the end of March, in one of the most important events in Lambda's history, Coretta Scott King spoke about lesbian and gay civil rights and the movement for racial justice to an enormous crowd of Lambda supporters in Chicago. Many of us were moved to tears to hear Mrs. King talk about Dr. King, the civil rights movement, and civil rights for lesbians and gay men, and it was an afternoon that no one who was there will soon forget! Mrs. King challenged all of us to strengthen our commitments to broad and inclusive civil rights work.

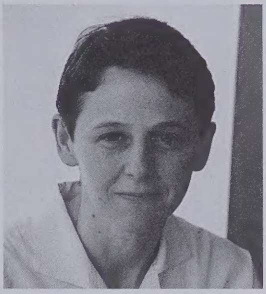
We were also challenged to keep our eyes on the largest possible picture by Lambda's 25the anniversary celebration at the United Nations in New York. This year is also the 50th anniversary of the U.N.'s Universal Declaration of Human Rights. We were reminded, as we met there, both of how far we have to go to make sure that all lesbians and gay men are treated fairly under law and of how important Lambda's work has been for the last quarter of a century in raising our expectations and experience of fair treatment.

In the months ahead, Lambda will continue to expand our civil rights litigation and education. We have two new attorneys starting in our headquarters in September, one in a permanent staff attorney position and the other on a prestigious two-year Skadden fellowship, and we have begun interviewing for a third attorney for our Midwest office. Anyone who has not been on Lambda's website recently should really click on to see the array of materials available at www.lambdalegal.org.

With the celebration of our 25th anniversary, Lambda is looking ahead to the future and to continued victories and work for lesbian, gay and HIV-related civil rights. I hope you will read more about our work in this Update, and on behalf of everyone at Lambda, I thank you for your support. ▼

There's No Such Thing as Some Equality

by Beatrice Dohrn


Michael Wakefield

Beatrice Dohrn

The celebration of Lambda's 25th anniversary year provides many opportunities to step back and look at the bigger trends and implications of our work.

Recently, I've noticed how Lambda's work reflects the increasing sense of entitlement and pride that the lesbian and gay community is finally expressing. This is evident in several ways. First, of course, there are the cases themselves.

Take custody litigation, for example. It wasn't so long ago that litigation focused simply on assuring that courts didn't cut lesbian or gay parents off from their kids entirely. If a parent got custody (or even frequent visitation) subject to severe restrictions like having no lover present with the kids, he or she was likely to be advised against challenging the restrictions for fear that the court might roll back the good parts of the case and go on to bar the parent's contact with his or her children altogether. Thus, most parents felt they had to take what good they had gotten subject to the discrimination that came attached.

Recently, though, Lambda has had opportunities to challenge directly limits like these, including those imposed on visitation. In one case, *Boswell* in Maryland, we've been successful, so far (the case is now on appeal to Maryland's highest court). In another, *Openshaw* in Alabama, restrictions remain in place. (See Docket, pp. 28, 27.) There will always be losses along the way, particularly as we ask for more and more.

There are plenty of other examples. An important one certainly is that we're demanding equal access to marriage and the privileges and responsibilities associated with it. (Just a few years ago, gay people were not even recognized as having enduring relationships and families.) Another is our support of the rights of lesbian and gay youth. (Not long ago, any linkage of the words "gay" and "youth" generally conjured up pernicious stereotypes about pedophilia.)

Our community's growing sense of entitlement also shows up in the nature of the particular arguments we make. I experienced this recently as I argued to the Second Circuit Court of Appeals in *Able v. USA*, urging that the court uphold District Court Judge Eugene Nickerson's eloquent ruling that "don't ask, don't tell" is unconstitutional (see Docket, p. 27).

Let me remind you briefly of the context. In an effort to dress its regulation of speech as being directed at conduct, "don't ask, don't tell" first requires total celibacy and abstinence from any same-sex affection by lesbians and gay men, and then imposes a presumption that any person who says he or she is gay or lesbian is likely to violate the gay-only prohibition on sex or affection. A service member who comes out or is discovered to be gay, theoretically, has an opportunity to rebut this presumption, but the evidentiary burden is very high and it is unclear how a person who actually is gay can prove absolutely no propensity or intent toward even same-sex affection. For some time, litigation against "don't ask, don't tell" tended to get focused on the question, "Can any gay or lesbian person rebut the presumption?" Even in our *Able* case, at various points, the courts became intrigued by this question. Our strategy has been to insist that the statute is discriminatory regardless of whether any gay service members can ever "rebut the presumption." It is utterly wrong to require such a procedure only for gay people, and, more fundamentally, it is unconstitutional to require celibacy of lesbians and gay men in the first place, when no good reason exists for doing so.

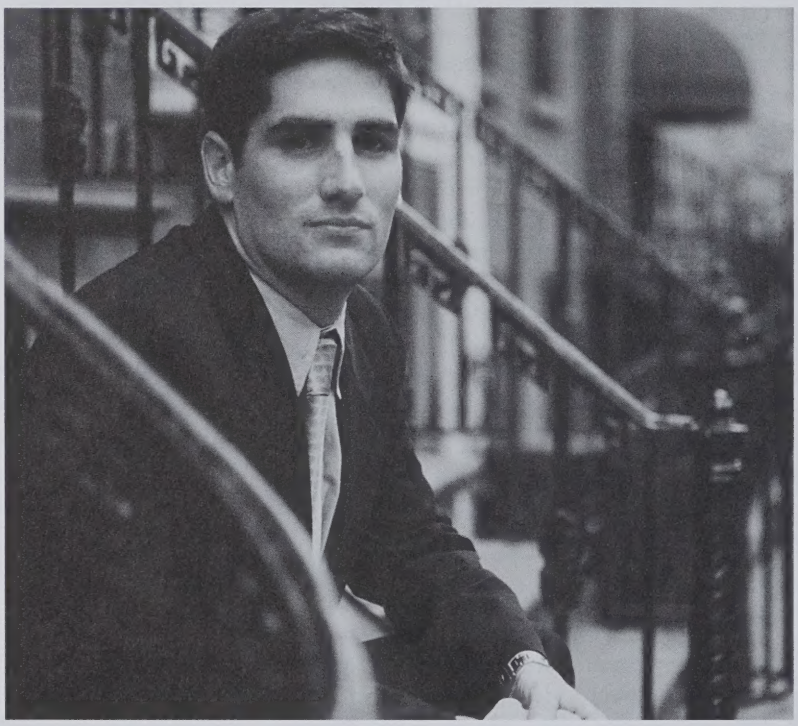
During the recent Second Circuit argument on April 2, one of the three judges suggested that the question of whether the presumption can ever be rebutted by a gay person was relevant to determining whether "don't ask, don't tell" discriminates based on status. While it is very difficult to read or predict the panel's overall inclination in the case, there was a gratifying moment of recognition on this point, when I reminded the court that an enactment that imposes radically onerous conduct rules only on lesbians and gay men discriminates based on status, regardless of whether some can and will comply with the unfair rules.

Arguments like these — those that remind a court that we're not looking from *some* inclusion, we're looking for *full* equality — are incredibly empowering. I'm pleased to report that we're making them, more often, and in more places than ever before! ▼

Gay Scouts Make Good Scouts

by Jon W. Davidson, WRO Supervising Attorney & Evan Wolfson, Senior Staff Attorney

Lambda recently won a significant victory in one of our two longstanding challenges to the Boy Scouts' policy of discriminating against gay boys and men. On March 3, in *James Dale v. Boy Scouts of America* (BSA), the New Jersey appellate court ruled in favor of our client, an Eagle Scout who challenged his expulsion from the Scouts as a violation of state anti-discrimination law. The *Dale* case is the first brought under New Jersey's gay civil rights law and the first appellate victory against the BSA's anti-gay policy.



The New York Blade

Lambda's victorious Boy Scout plaintiff James Dale.

A triumph for gay youth and their right to inclusion, the decision also attests to gay men's fitness as role models for youth:

> There is absolutely no evidence before us, empirical or otherwise, supporting a conclusion that a gay scoutmaster, solely because he is a homosexual, does not possess the strength of character necessary to properly care for, or to impart BSA humanitarian ideals to, the young boys in his charge. Nothing before us even suggests that a male, simply because he is gay, will somehow undermine BSA's fundamental beliefs and teachings. Plaintiff's exemplary journey through the BSA ranks is testament enough that these stereotypical notions about homosexuals must be rejected....

BSA does a legal two-step in attempting to defend its discrimination in *Dale* and the other cases around the country. First, it seeks to exempt itself from the anti-discrimination law. This would allow the Scouts to discriminate not only on the basis of sexual orientation, but also on race, religion, sex, or any other basis. In New Jersey, the court found BSA is a "place of public accommodation" subject to the law, given that it is large, holds itself out as "open to all boys," and has a special relationship with government entities such as schools.

BSA also argues that even if covered by the law, it should nevertheless get a license to discriminate under the First Amendment. The New Jersey court rejected that effort, relying on the United States Supreme Court's framework for balancing two values important to Lambda: the compelling government interest in ending discrimination reflected in civil rights laws on the one hand, and freedom of expression and association on the other. Under that framework (established in cases rejecting efforts by groups like the Jaycees and Rotary Club to exclude women, as well as prior cases involving race discrimination), a court weighing first amendment claims must look at the core expressive purposes that brought the members together. A "policy" proclaimed by a group's officers, board, or lawyers does not necessarily reflect the *members'* expressive purposes. Noting that 25% of the Scout troops in New Jersey are sponsored by public schools while other troops are sponsored by entities such as churches and synagogues that differ widely in their views on gay people, sexuality, and other matters, the court found that anti-gay prejudice and discrimination are not what bring the members together in Scouting. Accordingly, enforcement of the civil rights law would not force BSA to change its central message or purposes, nor interfere with the worthwhile activities and values for which its members join.

Several weeks later, the California Supreme Court ruled in *Curran v. Mt.Diablo Council of the Boys Scouts of America*, the pioneering BSA challenge filed in

continued on page 13

Utah Students Fight for Gay/Straight Alliance

by Jon W. Davidson, WRO Supervising Attorney & David S. Buckel, Staff Attorney

At many high schools across the country, students who are lesbian, gay, or bisexual have nowhere they feel safe and nowhere to turn for support. An encouraging development in the last several years, however, has been the birth of "Gay/Straight Alliances" (GSAs) formed by such students, along with their non-gay friends. These GSAs seek to provide students with "hate-free zones," to assist all students' development of self-esteem, and to educate their entire schools about prejudice, harassment, and anti-gay violence.

In October 1995, when students organized a GSA in Salt Lake City, the local school board sought to prevent it from meeting. Under a federal law known as the Equal Access Act, however, public schools that accept federal funding and that allow any non-curricular club to meet on campus cannot pick and choose among clubs based on their subject matter. Determined to bar the GSA, the Salt Lake City Board of Education attempted to evade the law by terminating 46 student clubs, claiming that the school district thereafter would only permit clubs directly linked to school curriculum.

In two years of Lambda's work with GSAs around the nation, we've learned of no other school board that, in order to block a GSA, has followed the extreme course of taking the axe to scores of valuable non-curricular clubs. And the Salt Lake City School Board cheated, even beyond being willing to harm all its students in order to cater to anti-gay bigotry. It allowed some clubs, such as the Future Business Leaders of America, to continue to meet by categorizing them as curricular, even though federal courts in other cases have ruled them not to be curriculum-related.

This year, brave students at Salt Lake City's East High School decided to fight this discriminatory treatment not only for themselves, but also for members of other currently banned clubs, such as the Black Students Union and Students Against Drunk Driving. In March, the East High Gay/Straight Alliance and two of its 16-year-old members filed suit in federal district court in Utah, with Lambda serving as lead counsel, joined by the ACLU of Utah, the ACLU of Northern California, and the National Center for Lesbian Rights. The suit seeks fair treatment of all non-curricular clubs and the termination of censorship of clubs based on the views of their members. The ultimate goal is an end to the isolation and fear that many lesbian and gay youth continue to experience in our nation's schoolhouses.

At a news conference the night before filing *East High Gay/Straight Alliance v. Board of Education* in Salt Lake City, are (back row) club founder Holly Peterson, ACLU of Utah Cooperating Attorney Laura Milliken Gray, David Buckel, ACLU of Northern California attorney Kelli Evans, and ACLU Cooperating Attorney Marlin Criddle, (front row) plaintiffs Keysha Barnes, club president Elizabeth Benson, and Ivy Fox.

Lambda's representation of the Salt Lake City students is an exciting advance for the work we launched in the *Nabozny* case in Wisconsin, where we put a million-dollar price tag on school officials' failure to stop anti-gay harassment, and in the *Wagner* case in Arkansas, where we are urging the U.S. Department of Education to give teeth to its new Title IX guidelines' inclusion of lesbian and gay students. It's very exciting to help empower students who want to fight bigotry *by organizing themselves.* To share what we've learned, Lambda has created the first legal resource packet for GSAs, which is available on our website at www.lambdalegal.org. ▼

Supreme Moments in the Battle to Win the Freedom to Marry

by Evan Wolfson, Marriage Project Director

Three state supreme courts — Alaska and Vermont as well as Hawaii — now are grappling with government discrimination that denies lesbian and gay couples the freedom to marry. The movement for equal marriage rights is truly a national struggle whose time has come.

In Vermont, New England's Gay & Lesbian Advocates & Defenders (GLAD) and two Vermont attorneys, Susan Murray and Beth Robinson, have appealed a lower court's reluctant acceptance of the state's flimsy and flawed rationale for privileging different-sex couples and harming same-sex couples by excluding us from civil marriage. Argument before the court is expected some time in the next several months.

In Alaska, the state attorney general is appealing to that state's highest court a lovely trial court decision which found that the refusal to allow same-sex couples to marry infringes upon the fundamental right to marry itself, and that it discriminates unlawfully on the basis of sex. The court noted that lesbian and gay people share with other human beings a basic human desire to choose a life partner, embodied in the constitutional protections for the freedom to marry. Accordingly, as in Hawaii, and as put forth in Vermont, the court held that the state must show a compelling reason for this discrimination. The couple, Jay Brause and Gene Dugan, together with a team of attorneys, are preparing for the next stage — either in the Alaska Supreme Court or back in the trial court.

In Hawaii, at this writing, we await the final ruling in Lambda's landmark case — a ruling that could come as soon as next week, or not for months! Even as we use this time to fight the backlash constitutional amendment proposal that goes before Hawaii voters in November, the wait for the Hawaii Supreme Court's decision seems endless. In fact, the case has not been pending before the court all that long, and we must use this pause as an opportunity to lay a foundation of public support for the battles still ahead post-breakthrough.

All of these court decisions center on questions each of us must be posing to gay and non-gay America: Why deny gay people the equal opportunity to take on the commitment, protections, and responsibilities of civil marriage? Why punish the children being raised by same-sex couples and deny their families the support and protections available through civil marriage? Why perpetuate discrimination, when allowing same-sex couples to marry would benefit us and those who care about and interact with us, while harming no one? Why should the government interfere with a choice that properly belongs to the couple in love, free of discrimination based on race, religion, sex, or, yes, sexual orientation?

While the courts move forward to confront these questions, each of us also has a role to play by engaging non-lawyers and non-gay Americans to think about these issues as well. It is our job to ask those we approach to do what courts do: take a deep breath, listen to the real-life stories of the couples and families harmed by the denial of the freedom to marry, consider the evidence in our support, and listen to the illegitimate, illogical, and often hateful arguments put forward instead of reasons by the other side. If we enable people to think and think anew about our freedom to marry, while beating back the backlash aimed at shutting down discussion state by state, then we will give them the space and familiarity they need to be fair and supportive, once we win our breakthrough, be it in Alaska, Vermont, Hawaii, or all three! ▼

The following individuals recently joined the more than 1,000 endorsers of Lambda's Marriage Resolution.

Reuter/Mark Caldwell/Archive Photo

Bishop Walter C. Righter, author of *A Pilgrim's Way*, acquitted of heresy charges brought when he ordained a gay man.

Sandra Bernhard

Matthew Broderick

Neve Campbell

Ingrid Casares

Alan Cumming

Tom Ford

Betsey Johnson

Christian Lacroix

Madonna

Terrence McNally

Michael Musto

Todd Oldham

Bishop Walter Righter

Herb Ritts

RuPaul

Cristina Saralegui

Marcus Shenkenberg

Courtesy of Cristina Saralegui Enterprises

Cristina Saralegui, charismatic host of *El Show de Cristina*, said to be the most-watched talk show in the world.

For more information about the Marriage Resolution, and a comprehensive list of individual signatories, visit Lambda's Web site at: www.lambdalegal.org, or call us at 212-809-8585.

Lambda Challenges Arkansas Sodomy Law

by Suzanne B. Goldberg, Staff Attorney

Under the Arkansas sodomy statute, a gay person can be thrown in jail for engaging in consensual sex. Non-gay people face no such punishment for their intimate sexual relations. To put an end to the profound harm this law causes, Lambda has filed suit in state court on behalf of seven Arkansas lesbians and gay men. We argue that the law violates the right to equal treatment and privacy guaranteed in the United States and Arkansas Constitutions.

As Representative Vic Snyder (D-Ark) has said, "We're just one aggressive, misguided prosecutor away" from the arrests of lesbians and gay men. Even without direct prosecution, however, our seven plaintiffs are each injured by being subjected to an unequal law; by being branded as "criminals" — whether prosecuted or not — for their most intimate and personal behavior; and by facing the risk, because of the statute, that they will lose their jobs, their housing, and custody of their children.

Plaintiff Elena Picado, for example, is a Spanish teacher in a Little Rock junior high school and a mother of two children. Because Arkansas courts have previously relied on the law's prohibition of same-sex sexual conduct to condemn lesbian mothers and deny them custody of their children, she too is vulnerable to that tremendous loss. Plaintiff Robin White, a technical writer for a software development and distribution corporation, is also at risk — the lease that governs her rented home requires her to "obey all laws applicable to her." By being sexually intimate with her partner at home, White arguably is in breach of her lease; this could result in an effort to evict her at any time. Similarly, plaintiff George Townsand is a nurse working in hospitals throughout the state. By law, he can lose his nursing license if he violates any criminal law — including the sodomy law.

At our January 28 press conference in Little Rock announcing the filing of our constitutional challenge, numerous organizations — including the Arkansas Coalition for Choice, the Arkansas chapter of Americans United for Separation of Church and State, and PFLAG — showed their support in person and in written statements gathered with the help of the Women's Project in Little Rock. Plaintiffs Randy McCain and Robin White spoke movingly about how it feels to be singled out and subjected to criminal penalties for sexual intimacy, only because they're gay.

Attorneys and plaintiffs in *Picado v. Bryant* at a news conference in the State Capitol Building in Little Rock, Arkansas, after filing suit on January 28. From left to right are attorneys Gary Sullivan, Emily Sneddon, Suzanne Goldberg, and David Ivers, with plaintiffs Vernon Stokay, Robin White, and Randy McCain.

Our plaintiffs — who include Bryan Manire, Vernon Stokay, and Charlotte Downey — all live with the fear of criminal prosecution for their most intimate sexual relations with their partners, including in the privacy of their homes.

Lambda is now in the thick of litigation, with assistance from our cooperating attorneys in Little Rock, David Ivers and Emily Sneddon of the Little Rock firm Mitchell, Blackstock and Barnes, and private practitioner Gary Sullivan. Along with the plaintiffs, our allies, and lesbians and gay men throughout Arkansas, we look forward to the day when all Arkansans can feel free of the threat of government efforts to police the most important aspects of their private and consensual intimate relationships. ▼

The Supreme Court Considers HIV

by Catherine Hanssens, AIDS Project Director

Clint Steib/Washington Blade

Catherine Hanssens outside the United States Supreme Court at a news conference following argument in *Bragdon v. Abbott*.

Recent victories against AIDS/HIV discrimination are refreshing good news. (See our docket for summaries of successes in California and New York, on page 34.) These advances also serve as markers for how far we still have to go in the legal struggles of the epidemic. Lambda's AIDS Project recently initiated litigation against insurers who persist in unfair "capping" of HIV care; we joined in cases challenging discrimination in disability and retirement benefits, and we persistently advocated for sane, science-based policies on tracking and preventing HIV infection. We also were part of a critical battle waged all the way to the United States Supreme Court: whether HIV infection that has not developed into visible symptoms is a disability covered by the Americans with Disabilities Act, or ADA. The Court's decision, expected in early summer, will shape the way we contend with these issues in the future.

It is fitting that the Supreme Court's first case involving the ADA also is the first time an HIV discrimination case has been before the High Court. Fears and myths of others have plagued people living with HIV since the beginning of the epidemic, and for this reason HIV discrimination is a very appropriate example of the sort of irrationality the ADA was crafted to cure.

The ADA was intended to help those with disabilities who are fully capable of participating in the job market and social institutions and services, but historically have been shut out because they are victims of stereotypes and phobias. For people with HIV, most discrimination has been a product of unfounded fears of contagion. The particular stage of an individual's illness matters little, once such irrational fears take hold. From doctors to produce clerks, people with HIV have lost their jobs not because of any physical inability to perform safely and well, but because they were feared as dangerous to have around. In the *Bragdon* case, Sydney Abbott's dentist rebuffed her simple attempt to have a cavity filled, all because he learned that she is HIV positive.

On March 30, when the U.S. Supreme Court heard the case, questioning by the justices raised both hope and concern. Justices Ginsberg and Breyer, and at times Kennedy, appeared to understand the underlying goals of the ADA, and the disabling impact of societal fears on those with HIV and other infectious diseases. However, in addition to the predictable hostility of Chief Justice Rehnquist and Justice Scalia (and the predictable silence of Justice Thomas), Justice Souter seemed moved by Dr. Bragdon's argument that Sidney Abbott is physically able to have sex and children, and that the risk of HIV transmission that accompanies these activities, therefore, is an issue of morality, not disability.

Our briefs had not rested on HIV's impact on reproduction as the sole basis of Abbott's disability. Regardless of whether HIV has visible symptoms, it has profound impact on numerous aspects of daily living. We also pointed out that the ADA provides strong protection for those who, like people living with HIV, are routinely *regarded* as disabled. But Justice Souter's concerns revealed a basic misconception about both HIV's impact and the broad scope of the ADA's protections.

And so while we prepare new challenges to the persistent problem of discrimination, we hold our breath and hope that, in the Supreme Court, law and logic will prevail. ▼

HIV Names Reporting — *Get Real!*

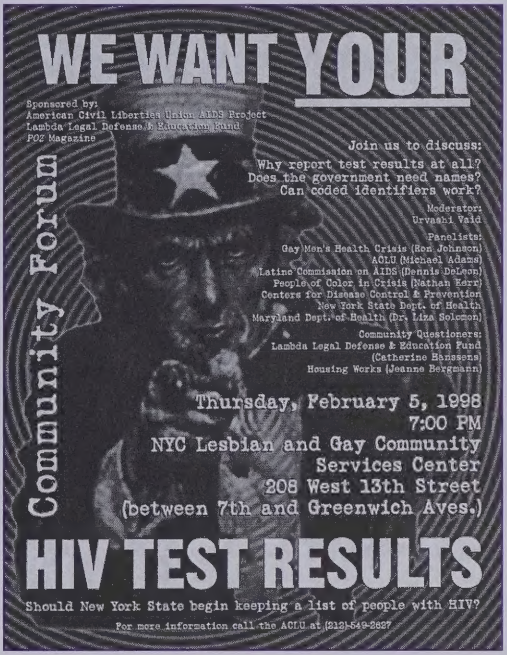
by Catherine Hanssens, AIDS Project Director

In the debate about "names reporting" — whether the government should collect the names of all who test positive for HIV — public officials should take care to understand some realities about testing and about many communities' experiences with government agencies.

The failure to appreciate the impact of class and social group differences on people's views of names-based reporting is a fatal flaw. Those who have had no experience with the criminal justice system, with reliance on government-sponsored benefits programs for subsistence or health care, or with having their family relationships monitored and judged by a government case worker, may not fully comprehend why the government and the legal system so often can be experienced as hostile forces to be avoided. For those who mistrust government or its enthusiasm for protecting them — and gay men of all races and people of color historically have good reason to do so — reassurances about the safety of surveillance data are unpersuasive.

Already, significant numbers of people avoid getting tested, and numerous studies show that names reporting would worsen this pattern.

Statistics from New Jersey, which mandated names reporting in 1992, point to evidence that people are unwilling to test under such circumstance. As of September 1997, New Jersey has reported only 12,955 cases of non-AIDS HIV — but that is less than one-third of the federal Centers for Disease Control and Prevention's conservative estimate of how many people likely are infected. More data through names reporting will not improve understanding about the size of the epidemic, nor will it address needs to better fund HIV prevention and testing programs. The information we already have has generated little or no programmatic response to the increase in infection rates among young adults or among injection drug users. (Witness, for example, the federal government's refusal to fund syringe exchange programs, despite the documented efficacy of these programs in slowing transmission among injection drug users.) Since broad, anonymous seroprevalence surveys clearly provide the best, most representative data, why should we insist on names as well?



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Community Forum

Join us to discuss:
Why report test results at all?
Does the government need names?
Can coded identifiers work?

Moderator:
Urvashi Vaid

Panelists:
Gay Men's Health Crisis (Ron Johnson)
ACLU (Michael Adams)
Latino Commission on AIDS (Dennis DeLeon)
People of Color in Crisis (Nathan Kerr)
Centers for Disease Control & Prevention
New York State Dept. of Health
Maryland Dept. of Health (Dr. Liza Solomon)

Community Questioners:
Lambda Legal Defense & Education Fund
(Catherine Hanssens)
Housing Works (Jeanne Bergmann)

Thursday, February 5, 1998
7:00 PM
NYC Lesbian and Gay Community
Services Center
208 West 13th Street
(between 7th and Greenwich Aves.)

HIV TEST RESULTS

Should New York State begin keeping a list of people with HIV?

For more information call the ACLU at (212)-549-2627

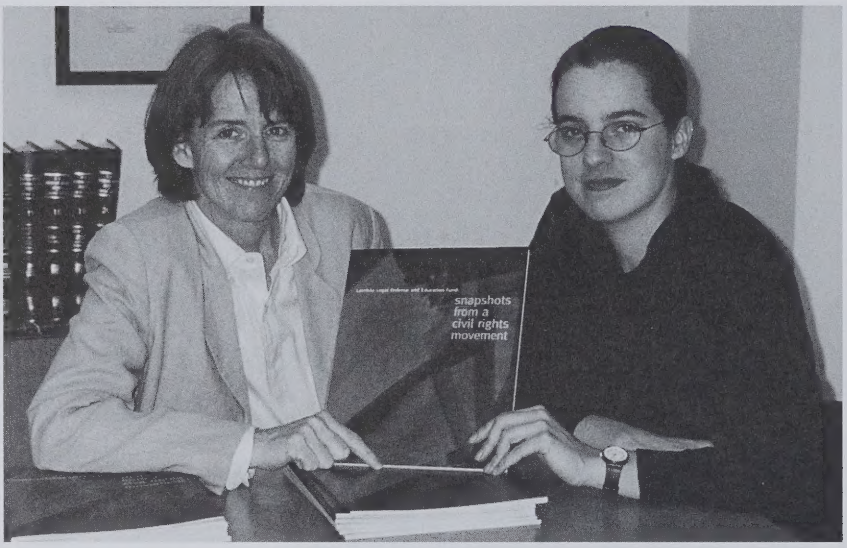
AIDS Project Director Catherine Hanssens participated in a community forum in New York City on names reporting at the Lesbian and Gay Community Services Center sponsored by Lambda, the ACLU AIDS Project, and POZ Magazine.

There also is ample reason to fear that the collection of names could be used, with the wave of a legislative pen, for purposes beyond monitoring the epidemic. There already are disturbing instances of the easy legislative shift to misuse of AIDS-related surveillance data. In Texas, for example, the State Health Department provides HIV test results of persons charged with sex offenses to prosecutors for the purpose of enhanced criminal penalties. Illinois has adopted a measure, not yet implemented, which allows use of AIDS case reports to track down HIV infected health care workers. The prospect of laws which involve public health officials in criminal prosecutions or make a positive HIV test the basis for losing a job will only compound the fear that many still have of finding out that they have HIV. Why get tested if doing so exposes one to this raft of potential problems?

Adoption of any system of HIV surveillance which ignores the views of the communities the system targets, or which further discourages people at risk of infection from getting tested, is doomed to failure. It is critical that a proposal to radically change current HIV surveillance respect that reality. ▼

Civil Rights, Not Special Rights

by Peg Byron, Public Education Director



Brian Jacobson

Snapshots editors Peg Byron and Deirdre Reznik.

Lambda began working from a New York apartment to try to turn the tide on seemingly endless homophobia in 1973. Desperate parents losing custody of their kids, dedicated military service members facing discharge, workers getting fired, students suffering censorship and brutality, begged for help as they faced terrible discrimination for being gay.

Have things changed in 25 years? Just note Lambda's current docket, such as the tragedy of an Alabama court decision that irrationally restricts a gay father's contact with his two children and a Miami federal court's refusal to examine why a south Florida salesperson was fired when his employer learned he had HIV. It is a gross understatement to say Lambda has lots of work ahead to stop vicious, damaging anti-gay discrimination.

Yet, looking at the pictures as well as stories in Lambda's new history book, "Snapshots from a Civil Rights Movement," you can see profound transformations in the legal status of lesbians, gay men, and people with HIV, with tangible results in all walks of life.

Through talent, foresight, and grit, Lambda lawyers are winning, state-by-state and up to the U.S. Supreme Court, in every category of our work. Lambda itself has grown explosively — from modest beginnings, with $25 in its bank account and no paid staff, to today, with a $3.7 million budget and 48 lawyers and support staff in four offices around the country.

More importantly, Lambda is helping to win the battle for the hearts and minds of the nation. We are nurturing the growing public consensus that anti-gay discrimination — in the workplace, the military, schools, the media, as well as in courts of law — is un-American.

In this sense, one of Lambda's biggest victories in this unfinished battle is increasing public recognition that we are not fighting simply for gay rights, but *civil rights.* Even when people don't use that term, and despite extremist rhetoric that we seek "special rights," the public is beginning to understand: this is a civil rights movement. We are making history. ▼

©1997 Albert Sanchez

"Lesbian Favorites" featured singer Ani DiFranco

Women Like Us

Thanks to Rhino Records for supporting Lambda with a unique recording release, *Lesbian Favorites: Women Like Us.* Recognizing Lambda's efforts on behalf of lesbians, Rhino features Lambda on packaging and in the marketing for this release and recently sent us a portion of this CD's proceeds! *Lesbian Favorites* includes recordings by Sandra Bernhard, Ani DiFranco, Janis Ian, and k.d.lang.

Lambda Again Tackles IRS

by David S. Buckel, Staff Attorney

Evidence is building that the IRS is infected with anti-gay bias, and with a second victory we have expanded our work to ensure that this most-feared federal agency does

undercut the important efforts of non-profit gay

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Lambda
Legal Defense and Education Fund, Inc.
New York
Los Angeles
Chicago
Atlanta
25th anniversary
1973 - 1998

Kathys' Group co-founders Lorry Garvin and Dorrie McCaffrey after the group received tax-exempt status.

mission, or give up on tax exempt status. In either case, our communities would lose important supportive organizations. Lambda has been able to step in and fight that result in these matters, but we are very concerned about the likelihood that there were and will continue to be other similar situations where the groups concerned *did* or *will* simply give up. Thus, we are working to uncover the source of these policies in the agency, and to trigger education within the IRS, to assure that these practices stop. We are seeking records from the IRS, in an effort to ascertain any patterns of mistreating lesbian and gay groups. ▼

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There is no inconsistency between these two rulings. Although *Curran* highlights the need for better and stronger anti-discrimination laws, it does not stop or even undermine *Dale* — now being appealed by BSA to the New Jersey Supreme Court — or the other legal and public education efforts to eliminate BSA's anti-gay policy.

Both the *Dale* and *Curran* decisions touched off a huge wave of editorial support and public discussion across the country, urging the organization to return to the values that it preaches. As summed up in the Scout Handbook's definition of "morally straight," those values are:

> To be a person of strong character, guide your life with honesty, purity, and justice. Respect and defend the rights of all people. Your relationships with others should be honest and open.

Openly gay Eagle Scouts Tim Curran and James Dale exemplify what Scouting is truly all about. Their fight, and Lambda's, is to return the Boy Scouts to the kind of organization that its members already believe it is — one that is truly open to all boys, promoting self-reliance and respect for the rights of others. In short, an organization that can and should include gay boys and men. ▼

MIDWEST REGIONAL OFFICE
REPORT FROM CHICAGO

Coretta Scott King Hails Lambda's Civil Rights Work

by Patricia M. Logue, MRO Managing Attorney

Kristine Wolff 1998

Coretta Scott King giving the keynote address at the Midwest Regional Office's annual Bon Foster Civil Rights Lecture on March 31 in Chicago.

Few Americans speak with as unquestioned a moral force on issues of justice and equality as Coretta Scott King. On March 31, Lambda was honored to have King join us at a celebration of both our silver anniversary nationally and the fifth anniversary of the opening of our Midwest Regional Office. Traveling on a rainy day from Atlanta, King had heartwarming and inspiring words for the nearly 700 supporters who crowded a Palmer House banquet room to hear this cherished veteran of the civil rights movement.

Noting Lambda's own place in history, King observed, "Every human rights movement needs an organization dedicated to pursuing justice in the courts... The NAACP Legal Defense Fund and other civil rights organizations and attorneys won great victories that have made America a more just and democratic nation. I therefore commend Lambda for providing outstanding leadership in protecting and expanding the legal rights of lesbian and gay Americans."

King's very presence was a rebuff to opponents who play a divide and conquer brand of politics, and she forcefully urged continued efforts to further coalition efforts.

// "As an African-American woman, I am concerned about discrimination against my race and gender," she said. "But it's just not good enough to support human rights for one's own race or culture and then be silent about injustices to other groups. As long as that's all we do, our success will be limited, and we will be working against each other instead of with each other." //

// "I've made the decision that I'm not going to put up with homophobic bigotry because it's morally wrong and because it lowers human rights standards for everyone." // King noted that some activists have sought to discourage her advocacy of gay civil rights, but she is adamant: //"I've always felt that homophobic attitudes and policies were unjust and unworthy of a free society and must be opposed by all Americans who believe in democracy." //

continued on next page

SAVE THE DATES!

Milwaukee Celebrates Lambda 25
July 14

Michiana Reception
August 22

Ladies at the Links
September 13

Cleveland Celebrates Lambda 25
September
(date to be announced)

SPECIAL EVENTS

CORETTA SCOTT KING SUPPORTS LAMBDA AT BON FOSTER LECTURE

Coretta Scott King spoke forcefully at Lambda's 25th anniversary luncheon and Bon Foster Memorial Civil Rights Lecture on March 31, bringing nearly 700 people to their feet at Chicago's Palmer House.

Event Co-Chairs Steve Wakefield, associate director of the Night Ministry, and Lambda Board Member Lisa Freeman, along with Honorary Event Co-Chairs Maggie C. Daley, First Lady of Chicago, and the Rev. Dr. Kenneth B. Smith, president of the Chicago Theological Seminary, headed a host committee of more than 50 prominent Chicago politicians, business people, community organizers, and Lambda board members to welcome Mrs. King to Chicago.

The annual Bon Foster Memorial Civil Rights Lecture serves as an educational forum at which Lambda considers its work in the broader spectrum of civil rights struggles taking place across the nation. Bon Foster was a Chicago attorney who died of AIDS in 1991, and his generosity supported the creation of Lambda's Midwest Regional Office in 1993. Patricia Logue spoke of the successes Lambda has achieved in the Midwest since that time and noted this year is also the fifth anniversary of the Midwest Regional Office. ▼

Similarly, King spoke of the AIDS crisis as part of a larger crisis of health security in the United States. "The families of people with AIDS not only suffer a human tragedy, but often financial ruin as well because insurance companies won't protect them. Women with breast cancer and people with other illnesses and disabilities have had similar experiences. Clearly, we have got to work harder to create a more compassionate health care system, which leaves no person behind — a system that takes responsibility to insure that no citizen with any illness or disability be denied medical care."

Just days before the 30th anniversary of the assassination of her late husband, she invoked Dr. King's profound words and extolled early civil rights work by many lesbians and gay men.

//"As Martin once said, 'We are all tied together in a single garment of destiny… an inescapable network of mutuality… I can never be what I ought to be until you are allowed to be what you ought to be.'" //

She continued, // "Therefore, I appeal to everyone who believes in Martin Luther King, Jr.'s dream to make room at the table of brother and sisterhood for lesbian and gay people. Gays and lesbians stood up for civil rights in Montgomery, Selma, in Albany, Georgia, and St. Augustine, Florida, and many other campaigns of the civil rights movement. Many of these courageous men and women were fighting for my freedom at a time when they could find few voices for their own, and I salute their contributions." //

Kristine Wolff 1998

At the Bon Foster Civil Rights Lecture in Chicago are (back row) The Rev. Dr. Kenneth B. Smith, Steve Wakefield, Patricia Logue, Kevin Cathcart, (front row) Maggie C. Daley, Coretta Scott King, and Lisa Freeman.

The luncheon crowd brought together Lambda supporters from many walks of life — from high school students to civic, corporate, religious, and other community leaders, gay and non-gay, of all races and ethnicities. The gathering gave hope that the "art of alliance" Dr. King advocated in his last book, as quoted by Mrs. King, will allow our movement to find "millions of allies, who in serving themselves, also support us, and on such foundations, unity, mutual trust, and tangible accomplishments will flourish." ▼

Patricia Logue with special guests Margarethe Cammermeyer and Randy Block, and Host Committee Chair Howard Israel at the annual Michigan in March Lambda 25 reception at the Detroit Club.

DETROIT CELEBRATES LAMBDA 25 WITH THIRD ANNUAL MICHIGAN IN MARCH

Some 300 enthusiastic Lambda supporters crowded the elegant Detroit Club on Friday evening, March 27, to celebrate Lambda's 25th Anniversary and to listen to the moving stories of Randy Block, whose lover Jerry Crane died shortly after he was forced from his teaching job, and retired Col. Margarethe Cammermeyer, a Lambda plaintiff when she became the highest ranking soldier discharged from the military. The Michigan community this year raised a record-breaking $23,000, and many thanks are owed to the host committee (headed for the second year by Howard Israel) for its marvelous efforts achieving this extraordinary success. ▼

More Heat In The South

by Jane Morrison, SRO Managing Attorney

Atlanta City Council Member Cathy Woolard presents a certificate of appreciation to Lambda, accepted by Jane Morrison and Abby Rubenfeld at Lambda's anniversary celebration.

Since the SRO opened last June, we've heard from hundreds of people about dozens of different lesbian and gay legal issues. Many people who call our intake lines relate painful stories of the discrimination they are suffering because of their sexual orientation or HIV status: a mother under a judge's order that prevents her from seeing her children; a teenager who fears being assaulted in the locker room at school; a man who calls first to say he fears losing his job, and then calls back the next week to say he was fired; an inmate who can't get access to his HIV medication on a routine basis; a man who relates how police used anti-gay epithets and treated him roughly in what should have been a routine traffic stop. You can't talk to these callers and listen to their stories without being deeply moved.

Whenever and however possible, the SRO offers Lambda's assistance. Unfortunately, we can't get involved in every case or represent people in routine legal matters because our mission is to choose cases that have the potential to change existing laws or set precedent that will affect large numbers of people.

Some of the calls we get do develop into Lambda cases. In this Update, you can read about new cases in the SRO's docket including our challenge to Georgia's antiquated sex statute or "sodomy" law *(State v. Powell).*

If we don't take a case, there are other ways we can help. Though we don't make referrals, we frequently pass on to callers the names of local attorneys who have expressed an interest in working on lesbian and gay issues. We've been building our Cooperating Attorney Network here in the Southeast and continue to work with local gay bar associations to establish working relationships with private practitioners. Often the names of a few friendly attorneys serve as a great relief to callers trying desperately to find gay-sensitive legal help.

In addition, through the SRO we're able to distribute Lambda's many publications and information packets. We've gladly shared briefs or other documents that were filed in similar cases and we're happy to discuss issues and strategies with local attorneys. In these ways, the SRO responds to the stream of calls for help that, unfortunately, shows no sign of abating. ▼

SAVE THE DATES!

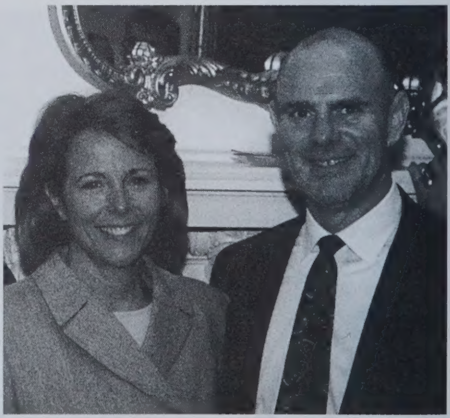
Raleigh Celebrates Lambda 25

On September 20, the anniversary celebration moves to Raleigh, North Carolina. A host committee under the leadership of partners and longtime Lambda supporters, John Gaitenby and Bob Newell, is busy planning the festivities. For more information, and to get involved with this event, please call the SRO.

SPECIAL EVENTS

ATLANTA KICKS-OFF LAMBDA'S NATIONAL 25TH ANNIVERSARY CELEBRATIONS

Kicking off the first of 16 national celebrations of Lambda's 25th Anniversary, over 200 Lambda supporters, including members of the national board of directors and staff, gathered on February 7 at the historic Atlanta Woman's Club. Lambda's first legal director, Abby Rubenfeld, was the featured speaker, following a performance by the Atlanta Gay Men's Chorus. Cathy Woolard, the openly lesbian city council member, presented a proclamation from the City of Atlanta. Kevin Cathcart announced a generous $25,000 challenge grant from longtime Atlanta donor, Edith Dee Cofrin, to encourage new Lambda memberships throughout the southeast. ▼



Longtime Lambda member Edith Dee "E.D." Cofrin, pictured here with Kevin Cathcart, joined Lambda for its 25th anniversary celebration at the Atlanta Woman's Club.

Georgia Man Gets Prison Term For Consensual Oral Sex

by Stephen R. Scarborough, SRO Staff Attorney

Decades ago, Georgia led the nation in recognizing a constitutional right to privacy. Unfortunately, the state has long failed to perceive the gross privacy violations that result from enforcement of its so-called sodomy law. Lambda has filed a friend-of-the-court brief in support of an Atlanta-area man who is facing prison because he performed oral sex on a woman.

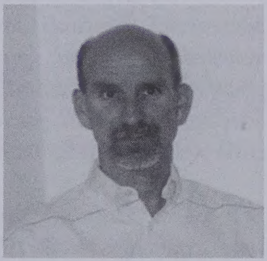
Anthony Powell, tried in 1997 on rape and forcible sodomy charges, testified that the sex was consensual. The jury believed him and acquitted on all original counts filed. However, in the course of his testimony, Powell testified to having consensual oral sex, so the trial judge required the jury to consider the "offense" of consensual sodomy as well. On that count, Powell was convicted and sentenced to five years in prison.

Because the U.S. Supreme Court upheld Georgia's sodomy law in the 1986 *Bowers v. Hardwick* decision, Lambda's brief focuses on state rather than federal law. We argue that the Georgia statute, which prohibits consensual conduct in a private home, cannot be reconciled with long-held concepts of personal privacy and human dignity. We also explain the necessity of striking down the statute in its entirety, rather than ruling that it can be applied only to same-sex conduct. The court will likely hear argument of the appeal this summer. ▼

Michael Wakefield

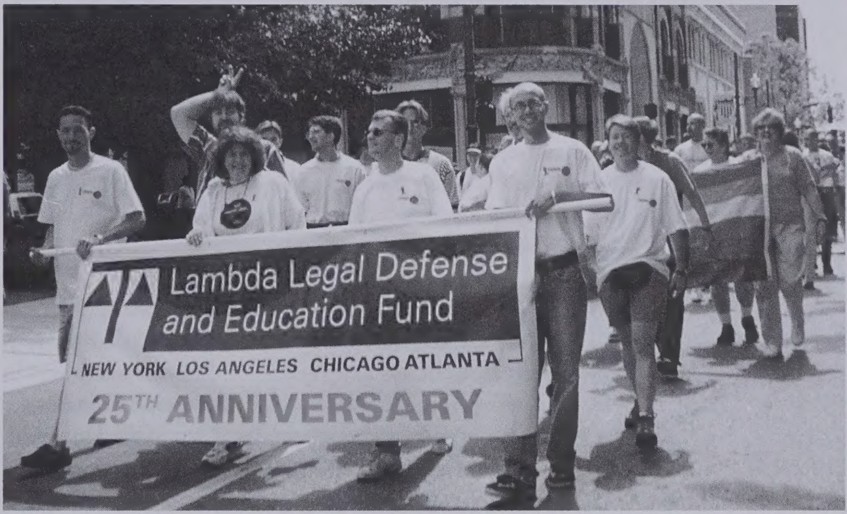
Stephen R. Scarborough

ATLANTA OFFICE WELCOMES NEW STAFF MEMBER



Jeffrey D. McIntyre

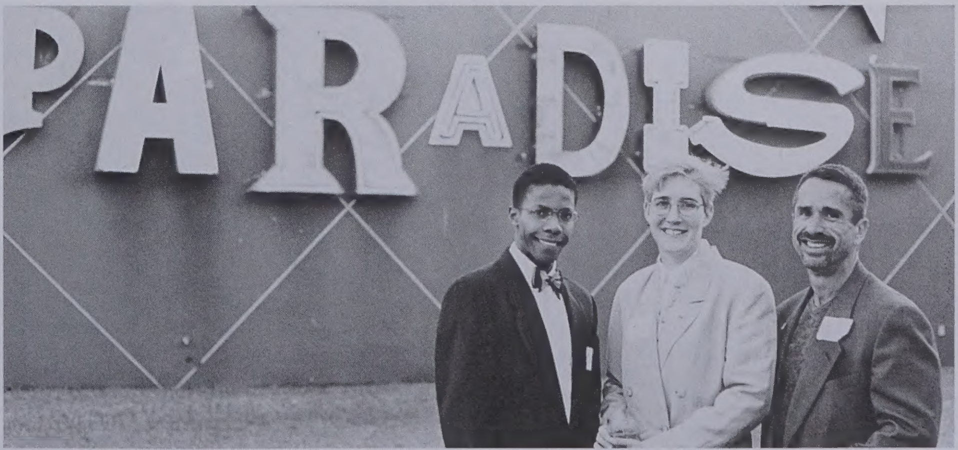
The SRO welcomes Atlanta native Jeffrey McIntyre, who started as office manager in January. McIntyre comes to Lambda after 20 years at Atlanta Legal Aid. He has also worked as the office manager at Stanford, Fagan & Giolito — the home of Debra Schwartz, co-counsel in the Shahar matter. A musician, McIntyre is currently the director of music at the oldest Catholic parish in Atlanta and was the founder and two-term artistic director of the Atlanta Gay Men's Chorus.


Lambda Legal Defense and Education Fund
NEW YORK LOS ANGELES CHICAGO ATLANTA
25TH ANNIVERSARY

Kicking off Pride season in the South, Lambda's SRO marched in Asheville's North Carolina Pride on June 6.

MIAMI CELEBRATES LAMBDA 25 AT MoCA

Under a spectacular Miami moon and starlit sky on March 28, over 300 Lambda friends gathered to celebrate Lambda's silver anniversary. The event and program took place in the outdoor court of the Museum of Contemporary Art (MoCA) and included a private showing of an extensive exhibit of the work of Keith Haring. Special thanks to Miami Board Member Jerry Chasen and a tremendously enthusiastic host committee for generating wide community support for this celebration. ▼



At Lambda's 25th anniversary celebration at Miami's Museum of Contemporary Art, pictured are Don Tunnage, co-chair of GALLA (Florida's gay lawyers group), Jane Morrison, and Board Member Jerry Chasen.

Can Courts Agree on Second-Parent Adoption?

by Jennifer C. Pizer, WRO Managing Attorney

Certificate of Honor

Photo courtesy of BALIF.

Bay Area Lawyers for Individual Freedom (BALIF) presented Lambda with BALIF's Legal Services Award at reception on February 5 in San Francisco; Lambda also received a commendation from the City of San Francisco. Pictured are Supervisor Leslie Katz with Board Co-Chair Gale Richards and Jennifer Pizer.

Around the Western Region, legal protections for lesbians and gay men can diverge as dramatically as the geography. Second-parent adoption — where a child's non-biological parent is allowed to adopt the child without severing rights of the biological parent — is a prime example.

Whether courts agree to grant these adoptions for gay families varies mainly with judges' ability to understand that *all* children are best served by strong legal protections and family security. Whatever the vagaries of state adoption laws, courts are supposed to act in the "best interests" of the children before them.

Following Lambda's success securing this approach in New York and Illinois, we now are helping parents who seek to make this treatment routine in Idaho. With a case headed for that state's Supreme Court, *In Re Baby Doe*, Idaho will be the first western state to address this subject at its highest court.

In Alaska, California, Nevada, New Mexico, Oregon, and Washington, only lower courts have approved second-parent adoptions for lesbian and gay families. But, even in California, access to this basic legal protection is erratic — such adoptions are fairly common in Los Angeles and San Francisco, but the same is not true in more conservative counties. Moreover, California's Governor Pete Wilson has attacked gay families, spending much of 1997 grandstanding for an anti-gay rewrite of the state's adoption regulations; passionate resistance of the state's child welfare professionals eventually stalled him.

In an unusually ugly turn, in the Idaho case, the lower court rejected the adoption petition of a non-biological lesbian mother based solely upon Idaho's anti-gay, anti-marriage recognition law. This hateful law — like irrational laws against consensual sodomy — should not be used as an open license to discriminate against gay people. Later this summer we head to Idaho knowing our efforts are being watched throughout the region and the country. ▼

SAVE THE DATES!

Seattle Celebrates Lambda 25
Thursday, August 6

San Diego Celebrates Lambda 25
September
(date to be announced)

Los Angeles Celebrates Lambda 25
Thursday, October 15

SPECIAL EVENTS

LAMBDA
POLITICAL GRAND MARSHAL
LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.

In honor of its 25th anniversary, Lambda was named Political Grand Marshal in this year's Long Beach Pride Parade on May 17. Kicking off this year's Pride festivities and representing Lambda are staff and friends from the WRO. Lambda is delighted to also have been named Grand Marshal for Christopher Street West Parade in Los Angeles in June.

Domestic Partners Victory in Human Terms

by Jon W. Davidson, WRO Supervising Attorney

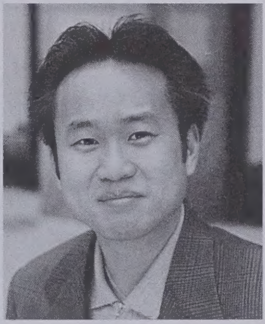
Lawsuits over whether cities and counties can provide their employees with domestic partner health insurance benefits tend to center on technical questions, such as what power the state granted its local governments and how state law defines the term "dependent." Beneath those issues, however, lie very real human dramas.

On March 13, Arizona Superior Court Judge Allen Minker ruled from the bench in *LaWall v. Pima County* that Pima County does indeed have the authority to secure health insurance for its employees' domestic partners and their children. Directly affected by the ruling, many in the courtroom that day couldn't control themselves, and a yelp of joy and applause broke out from the gallery. In human terms, the victory Lambda helped win means that Richard McLean, for 14 years the partner of our client Damien McNeal, finally will have health insurance, as will the families of scores of other county employees who previously were uninsured. For our client Ana Bertha Lozano, it means she no longer needs to fear being unable to afford essential care or of potentially losing the house she owns with her partner, Matilde Slate, should Slate become seriously ill. "I'm just happy," Lozano told reporters as she left the hearing in *LaWall v. Pima County*. ▼

Matilde Slate (back row) with her domestic partner and case intervenor Ana Bertha Lozano, Jon Davidson, and intervenor Damien McNeal, (front row) Cooperating Attorney Pam Liberty, and Pima County employee Mike Humphrey gathered after the hearing.

Your Benefits or Your Rights?

by Myron Dean Quon, WRO Staff Attorney



Michael Wakefield

Myron Dean Quon

Many people with HIV confront a quandary like one just resolved by a California appellate court. In *Bell v. Wells Fargo Bank*, the court reversed a trial court ruling and affirmed the right of people who seek disability payments after losing a job to challenge the firing as discriminatory. (See p.34 for more details.) This case is of particular importance because it rejects the concept that those with HIV who are forced out of a job should be foreclosed from applying for disability benefits unless they forego a challenge to the job discrimination which forced them out of the work in the first place. We hope that winning this battle will motivate many employers to provide the reasonable accommodations that allow many with disabilities to remain in the world of paid employment. The decision also may inspire advocates to look to state law as an alternative way to get relief, given the mixed results federal cases on this issue have produced. ▼

SAN FRANCISCO CELEBRATES LAMBDA 25

April 16 was the kick-off date for Lambda 25 in the Western Region, as San Francisco supporters hosted a sell-out gala at the glittering Palace Hotel. More than 450 guests gathered for the reception and dinner, with raucously inspired commentary by host and featured guest, Marga Gomez. Long-time gay rights champion Mary Dunlap and Kevin Cathcart spoke of the momentous challenges and progress achieved in the past 25 years. Therese Stewart, the City's attorney in *ATA v. San Francisco*, offered a special tribute to Lambda for helping to defend San Francisco's "Equal Benefits" ordinance. Singer and recording artist Paula West then brought the evening to an upbeat and melodious close with a special selection of jazz favorites.

Francis da Silva

Featured performer Marga Gomez entertained the audience gathered at Lambda's 25th anniversary celebration in San Francisco.

Celebrations!

by William A. Peters, Development Director

Michael Wakefield

William A. Peters

Lambda 25 is here! The celebration train has left the station, embarking in Atlanta, weaving down to Miami, up to the Motor City, on to the Golden Gate Bridge with a quick trip cross country to the United Nations, then Dallas for brunch, followed by a lazy Sunday afternoon on the greens of a New Jersey vineyard. All this... and we're just halfway through a full-year celebration of Lambda's silver anniversary.

In every town, the crowds of loyal Lambda members, both new and old, have been truly astounding in their turnout and support of this wonderful and historic milestone. Many have used this occasion to step up their giving levels as an encouragement to our work. This show of support says clearly that Lambda continues to make a difference in the life of the lesbian and gay community. Recognized with letters and proclamations from President Clinton and the mayors of each city, Lambda has been honored by many plaintiffs, including Grethe Cammermeyer and James Dale, founder Bill Thom, first legal director, Abby Rubenfeld, and thousands more lesbians, gay men, friends, loved ones, and supporters.

It's been a wonderful trip and we're looking forward to greeting more of you during our next stops along the way this year in Chicago, Milwaukee, Seattle, San Diego, Raleigh, Cleveland, Philadelphia, Los Angeles, and Washington. ▼

More than a few partners have told us that they first met at a Lambda event. If you and your partner did, or you know of those who have, drop me a line with who, where, when and anything else you think our members would enjoy reading about... well, almost anything.

SAVE THE DATES!

Tenth Annual Hamptons Reception & Pool Party
Saturday, July 4

The Fire Island Anniversary Gala: "20/25"
Saturday, August 8

Philadelphia Celebrates Lambda 25
Saturday, September 26

Columbia County Reception
September
(date to be announced)

Connecticut Reception
September
(date to be announced)

New York Theater Benefit: "Swan Lake"
Wednesday, October 7th

Washington, D.C., Celebrates Lambda 25
October
(date to be announced)

SPECIAL EVENTS

WOMEN'S GALLERY GALA ARRIVES IN CHELSEA

Lambda's 9th annual Women's Gallery event, which had been held in the Soho area of Manhattan, moved uptown to the Feigen Contemporary gallery in Chelsea. The 250 supporters enjoyed a jazz ensemble, cocktails, and a buffet.

DM Reznik

Guests at Lambda's 9th Annual Women's Gallery Gala in New York.

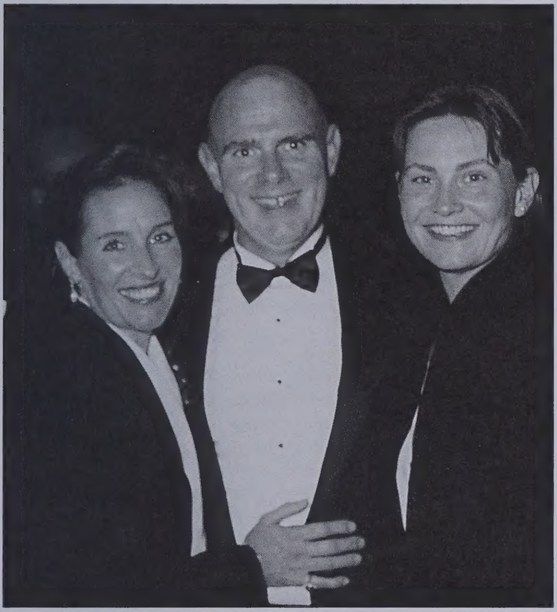
DALLAS CELEBRATES LAMBDA 25

Tim Gill speaks to those gathered at Lambda's anniversary celebration in Dallas.

A capacity crowd gathered for brunch at the new Dallas restaurant, Aquaknox, on May 17 to celebrate Lambda 25. Featured guests included the Hon. Jean Dubofsky, the former Colorado Supreme Court justice who argued *Romer v. Evans* before the U.S. Supreme Court as counsel with Lambda. Tim Gill, of Quark, Inc. and The Gill Foundation, also addressed the guests, announcing a matching gift to Lambda in honor of the event. Dallas Board Member Ed Ishmael and a tremendously dedicated host committee organized this event. Special thanks to Michael Dewey, Richard Gleiner, Ron Guillard, and Mark Niermann.

NEW YORK CELEBRATES LAMBDA 25 AT THE UNITED NATIONS

Monday evening, May 4, witnessed history at the United Nations. A capacity audience of nearly 500 paid tribute to the first 25 years of this civil rights organization. Guests were welcomed to the Delegates' Dining Room by Lambda Board Co-Chairs Gale Richards and Rick Davis, who also introduced the host for the evening, Cherry Jones, the first out lesbian to win the Tony Award. After the keynote speech by Kevin Cathcart, guests were treated to an extraordinary performance by the "darling of cabaret," Andrea Marovicci.



Michael Wakefield

Featured guests of the evening Andrea Marcovicci and Cherry Jones with Kevin Cathcart.

Michael Wakefield

Current and former chairs and co-chairs of Lambda's Board of Directors since 1973: (back row) Harry Harkins, Carol Buell, David Hollander, Judith Turkel, Bill Hibsher, Charlie Spiegel, Barry Skovgaard, and Bill Thom; (front row) Rick Davis, Gale Richards, Jayne Sherman, and Noemi Masliah.

Lambda staffers Beth Feinberg, Jessica Dyson, Ali Karfve, and Louanne Marchand enjoy dinner at the U.N.

Michael Wakefield

Joe Steffan, former Lambda military plaintiff, former Board Co-Chair Barry Skovgaard, Timothy Wu, Kevin Cathcart, and James Hormel.

At Lambda's new Philadelphia event were Event Chair Tony Ulloa, Donald Millinger, and Reception Committee Chair Jeff Wolper.

PHILADELPHIA INAUGURATES A NIGHT ON THE TOWN

A new event was added to the Lambda special events calendar: Eat Out: A Night on the Town in Philadelphia. On Sunday evening, April 19, current Lambda members hosted more than 30 private dinner parties for the purpose of introducing new members to Lambda. All the hosts and guests, nearly 220 strong, convened later at the Art Alliance in midtown Philadelphia for a dessert reception and program, with Ruth Harlow as the guest speaker, followed by a dance performance. Some 130 new members joined Lambda thanks to this unique event. Many thanks to the dinner hosts and to the Delaware Valley Lambda Committee, including Donald Millinger, Tony Ulloa, Bob Morrison, and Jeff Wolper, for the event concept.

(NOTE: Anyone interested in launching a similar event in their city, please call Bill Peters in the New York office for details.)

Lambda Welcomes New Board Members

Michael Wakefield

New members of Lambda's Board of Directors (include): (back row) Susan Owens, Jerry Chasen, Clarice Liu, Martha Stark, Vallerie Wagner, (front row) George Tuttle, Joan Garner, Gregory Simoncini, and Vivian Todini.

New Staffers Join Lambda's New York Office

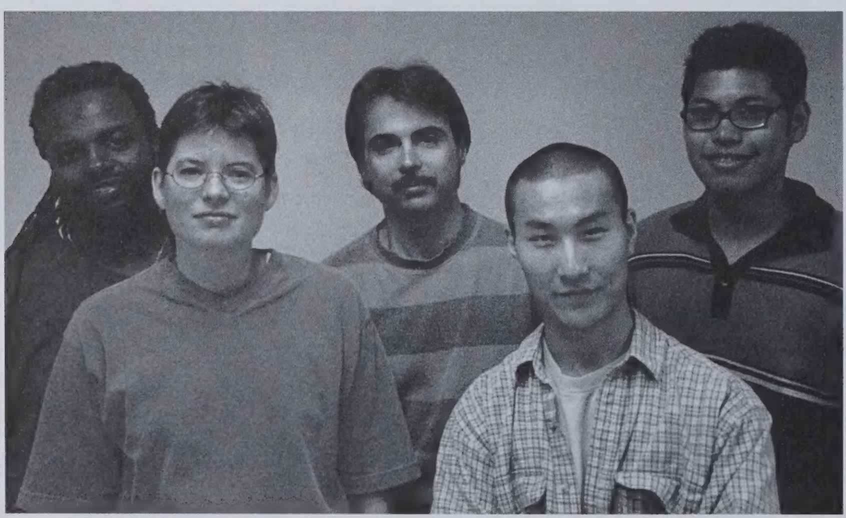
Lambda is happy to welcome five new staff members to its National Headquarters office.

- Tim Bryant and John Kim have joined the administration and finance departments – Bryant as executive assistant and Kim as an administrative assistant who will also work for the development department.

- Jenni Hoffman became the legal department's new paralegal this spring.

- Sam Lisuzzo and Joneil Adriano joined the growing Public Education Department. Lisuzzo has filled a new administrative assistant position. Adriano has taken over as public information coordinator.

- Best wishes to Kathy Strieder, Gillian Chi, and long-time staffer Peter Cameron, all of whom left Lambda this spring.



DM Reznik

New staffers Tim Bryant, Jenni Hoffman, Sam Lisuzzo, John Kim, and Joneil Adriano.

Lambda Legal Defense and Education Fund

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* *Executive Committee Member*

DOCKET

CASE UPDATES FROM LAMBDA LEGAL DEFENSE

SEXUAL ORIENTATION DISCRIMINATION

ANTI-GAY INITIATIVES

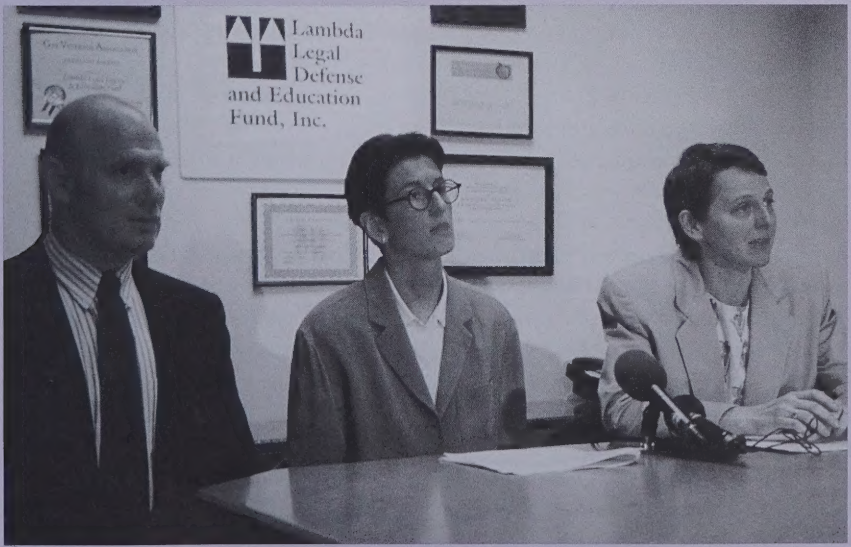
EQUALITY FOUNDATION OF GREATER CINCINNATI V. CITY OF CINCINNATI
(U.S. Supreme Court)
SUPREME COURT REVIEW REQUESTED.

This is the last remaining challenge to anti-gay ballot measures similar to Colorado's Amendment 2, which the U.S. Supreme Court struck down in *Romer v. Evans.* Armed with that precedent, Lambda is fighting for the principle that a city has no more power than a state to target gay people and prohibit legislation that would protect us from discrimination.

Equality challenges an anti-gay ballot initiative, Issue 3, that would repeal any present and bar any future Cincinnati laws or policies that prohibit discrimination against lesbians, gay men, and bisexuals. Following *Romer*, the Supreme Court set aside an earlier ruling by the U.S. Court of Appeals for the Sixth Circuit upholding Issue 3, and remanded the case for reconsideration. Last February, the full Sixth Circuit refused to rehear a October 1997 holding by a three-judge panel that *Romer* did not apply to this case because Issue 3 is a local, rather than statewide, measure and because Issue 3 concerns "special preferences." Thus, the court again upheld the anti-gay amendment. However, six judges dissented from the denial of rehearing, finding the panel had drawn "distinctions without a difference," and agreeing with Lambda that *Romer* controls this case and dooms Issue 3.

Lambda and our co-counsel filed a petition in May, asking the U.S. Supreme Court to review the case again, to reverse the Sixth Circuit's ruling, and to strike down the Cincinnati amendment. The lower panel's analysis conflicts head-on with *Romer's* proclamation that, "Government and each of its parts [must] remain open on impartial terms to all who seek its assistance."

Patricia Logue and Suzanne Goldberg are working on the case with our co-counsel Cincinnati civil rights attorney Alphonse A. Gerhardstein, who argued the case, Scott Greenwood for the ACLU of Ohio, and Ohio attorney Richard Cordray.



DM Reznik

Kevin Cathcart, Ruth Harlow, and Beatrice Dohrn at Lambda's news conference following the U.S. Supreme Court's decision in *Oncale* on March 4. See next page.

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EMPLOYMENT

Oncale v. Sundowner Offshore Services, Inc., et al
(U.S. Supreme Court)
VICTORY!

In March, the U.S. Supreme Court reversed the Fifth Circuit Court of Appeals and ruled that Title VII prohibits sexual harassment in the workplace regardless of the sexes of the harasser and target. The Fifth Circuit had ruled that federal law's prohibition against sexual harassment does not include same-sex sexual harassment, even harassment as blatant as Oncale's supervisor exposing his penis and placing it on Oncale's body, and also, along with two co-workers, attacking Oncale in a shower and forcing a bar of soap into his buttocks while threatening rape.

In a unanimous opinion authored by Justice Scalia, the Court lamented the lack of common sense demonstrated by courts that have categorically excluded same-sex claims, and also those that have hinged liability on a same-sex sexual harasser being lesbian or gay. However, the opinion left a great many questions open, including how exactly a plaintiff in a same-sex case can make the showing that she or he suffered the abuse "because of sex."

Lambda's brief, which was joined by the ACLU and nine other organizations, including a range of women's and gay groups, urged the Court to reject the notion that sex or sexual orientation can dictate the availability of a remedy under a statute aimed to *eliminate* discrimination.

Our brief was written by Beatrice Dohrn, with assistance from Jennifer Middleton of the ACLU's Lesbian and Gay Rights Project.

Kovatch v. California Casualty Management Co.
(California)
APPEAL ARGUED.

This case appeals a grant of summary judgment dismissing a claim of employment discrimination based on sexual orientation. Lambda joined the appeal, one of the first to test the protections provided by California's ban on sexual orientation employment discrimination.

Dan Kovatch, who had been an award-winning, top-performing employee, encountered unrelenting anti-gay comments when he transferred to the San Diego office of California Casualty Management Co. Kovatch, who had already been experiencing physical and psychological reactions to the hostile work environment, took disability leave rather than attend a meeting at which his supervisor told him to expect to be fired because he is gay. When he was able to return to work, CCMC was unwilling to transfer him out of the office where the harassment occurred. The company fired him because he would not return to that office and so had exceeded the six-month disability leave. Because there is limited appellate-level case law defining the protections afforded by California's anti-discrimination law (enacted in 1992), we are very troubled by the judge's decision to dismiss Kovatch's claims – that he was constructively discharged based on his sexual orientation – before a jury could assess them. If judges are free to determine that allegations such as these are not to be taken seriously, then nondiscrimination laws will be subject to judicial veto.

Our *amicus* brief to the California Court of Appeal in San Diego, urging reversal, presents the results of social science research documenting the deleterious effects of homophobic harassment on lesbians and gay men.

Kovatch's counsel, Los Angeles practitioner Nick DeBiase, and Lambda Cooperating Attorney Jim Emery of San Francisco's Keker & Van Nest argued on Kovatch's behalf on May 15. Emery prepared Lambda's *amicus* brief with Jennifer Pizer.

Grobeson v. City of Los Angeles
(California)
AWAITING DECISION.

This case is part of an ongoing attempt to bring about much-needed reforms in how the Los Angeles Police Department treats its lesbian and gay employees.

First openly-gay LAPD officer Mitch Grobeson on the day of his Board of Rights hearing in Los Angeles.

It springs from a ground-breaking sexual orientation employment discrimination lawsuit against the City of Los Angeles, brought by Sgt. Mitch Grobeson, the first openly gay officer in the LAPD, which was settled in 1993. Grobeson filed a new suit in U.S. district court in January 1996 for violation of the prior settlement and of his federal and state constitutional rights after he was reinstated to the force. Portions of that suit were dismissed and then refiled in state court. In addition, Grobeson has challenged the LAPD's decision to suspend him for more than nine months for his "unauthorized recruiting" of lesbians and gay men to join the LAPD and for allegedly wearing his uniform without permission at a gay pride festival, at an AIDS fundraiser, and in a photograph in gay newspaper. A hearing on these administrative complaints, assigned to the same judge hearing the state court suit, was held in late March 1998. We await the judge's ruling on whether the discipline that was imposed should be overturned.

Apparently spurred by these suits, the City recently hired independent experts to study and make recommendations to further combat sexual orientation discrimination in city employment.

Bert Voorhees, Theresa Traber, and Fernando Olguin represent Sgt. Grobeson. Lambda, through Jon Davidson, is acting in an "of counsel" capacity in connection with the lawsuits and administrative proceedings.

Ramos v. Commonwealth of Puerto Rico
(Federal Court, Puerto Rico)
NO CHANGE. AWAITING DECISION.

Lambda and our co-counsel have moved for summary judgment in this case on behalf of the Gay Officers Action League (GOAL), a New York-based organization for lesbian and gay police officers. We are challenging anti-gay discrimination and harassment by the Puerto Rico Police Department (PRPD), including a PRPD disciplinary rule forbidding officers from "associating with homosexuals," as well as the harassment of GOAL members during the group's convention in San Juan in early 1995.

During the convention, PRPD officers conducted a raid on a San Juan lesbian bar hosting a reception for GOAL, on the pretext of inspecting the bar's liquor license. In addition, PRPD officers blocked GOAL from conducting a short walk on a sidewalk in the city's tourist district that was intended to raise gay visibility. GOAL, with Dr. Rosalina Ramos Padro, a Puerto Rico lesbian activist who owned the bar at the time of the raid, have sued, alleging that these incidents and the disciplinary rule violate their rights under the constitutions of the United States and Puerto Rico and under Puerto Rico law.

Suzanne Goldberg and Ruth Harlow are working on the case. Our co-counsel is Colleen Meenan, a solo practitioner in New York. Judith Berkan, a civil rights attorney in Puerto Rico, represents Dr. Ramos.

BENEFITS

AIR TRANSPORT ASSOCIATION V. CITY AND COUNTY OF SAN FRANCISCO
(Federal Court, California)
VICTORY!

The trial court has granted summary judgment on several key legal issues in this case. The suit concerns San Francisco's legislative effort to limit the vendors and contractors it will use to those who offer benefits to their employees irrespective of marital status and sexual orientation. The ATA, a trade association representing the country's major passenger airlines and freight carriers, sued, seeking an order that San Francisco has no power to restrict its contracts in this way, and especially not regarding airlines. The case presents novel questions about the amount of freedom a city has to restrict its contractors to those with practices that reflect the city's commitment to equality and fairness. As San Francisco's was the first such municipal ordinance in the country, other cities considering similar rules are closely watching this lawsuit.

The April 10 ruling holds that ERISA (a federal law that deals with employee benefit plans), does not cause a problem for most of San Francisco's contracting because the City is merely acting as a "market participant," that is, like any other buyer or seller of goods or services. However, the court also ruled that the "market participant" exception to ERISA does not apply to the airlines because San Francisco exerts too much control over the operation of the airport, thus there isn't really a free market with respect to airline travel (airlines can't just choose to take their business elsewhere). So, unfortunately, the airlines will be mostly free to ignore the ordinance. There's a small exception to that conclusion for those types of benefits not governed by ERISA (like relocation benefits, free travel privileges, etc.), but San Francisco can't insist on equality in the most important benefits (health, pension, etc.). Finally, the court found that, for non-airline contractors, San Francisco can only insist that they provide equal benefits to employees who: (a) work in San Francisco, or (b) work on land owned/controlled by San Francisco, or (c) are located anywhere in the country and are working directly on contracts for San Francisco.

Jennifer Pizer drafted Lambda's portion of the *amicus* brief, with assistance from Cooperating Attorney Heidi Gewertz of San Francisco, and USC Law School student Jody Hoenninger. Co-*amici* include the ACLU of Northern California's Kelli Evans, and Jeff Lewis and Janet Brown, ERISA specialists, of the Oakland law firm of Sigman, Lewis & Feinberg, as well as the National Center for Lesbian Rights.

FUNDERBURKE V. UNIONDALE UNION FREE SCHOOL DISTRICT
(New York)
NEW CASE!

The Uniondale, New York, school district provides its employees and retirees with health coverage for their spouses, but refuses to provide such coverage for domestic partners. This refusal continues even though the State of New York has set up an insurance plan in which local school districts can participate and that includes domestic partner coverage. Duke Funderburke is challenging the Uniondale benefits scheme, arguing that it constitutes marital status discrimination in the terms of employment, a violation of the New York State Human Rights Law. His challenge was dismissed by the trial court and is now before New York's intermediate appeals court, the Appellate Division.

Lambda filed an *amicus* brief that adds important information about New York law to the case, and that emphasizes the importance of eradicating this type of discriminatory employment benefit that favors married employees over similarly situated unmarried ones. Lambda then was asked by Funderburke's attorney to argue the appeal on Funderburke's behalf, but the Appellate Division refused to permit that. We are now awaiting a decision.

Ruth Harlow wrote Lambda's brief.

TANNER V. OREGON HEALTH SCIENCES UNIVERSITY
(Oregon)
APPEAL ARGUED.

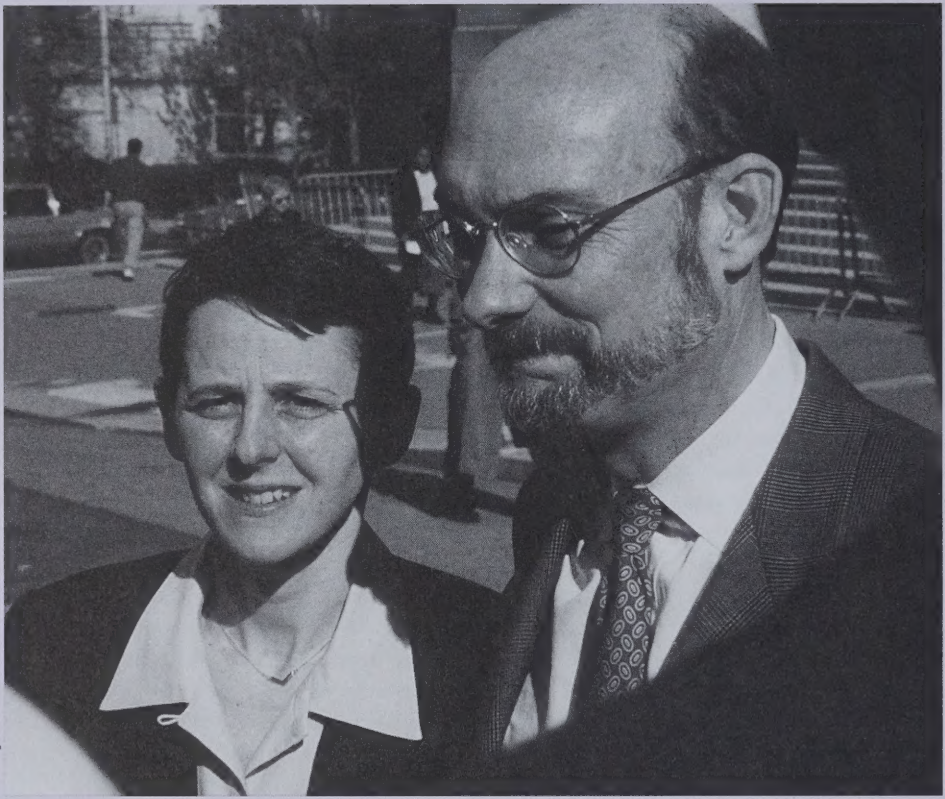
This case tests whether Oregon law entitles state employees who are in same-sex relationships to receive health insurance and other employment benefits similar to those of their married co-workers. Plaintiffs are three lesbians who work for the Health Sciences University and their domestic partners.

Following a trial, the Oregon state court judge determined that the State's practice of limiting family benefits to married couples constitutes sex and sexual-orientation discrimination against these plaintiffs, and ordered the State to extend to the plaintiffs equal benefits. The State has appealed this decision. Lambda has submitted an *amicus* brief supporting the workers, documenting the many positive effects of extending benefits equally to employees who have domestic partners and the minimal burdens associated with doing so. Our brief also addresses the particular impact upon lesbians and gay men of employment policies that discriminate based upon marital status.

In March, the court heard oral argument on the State's appeal and then requested supplemental briefing. A decision is expected sometime this summer.

Jennifer Pizer drafted the *amicus* brief jointly with ACLU of Oregon Cooperating Attorney Lynn Nakamoto of the Portland firm Markowitz, Herbold, Glade & Mehlhaf.

Become a
Cooperating Attorney
Call Lambda at 212-809-8585



Brian Jacobson

Beatrice Dohrn and co-counsel ACLU Lesbian and Gay Rights Project Director Matthew Coles after Dohrn argued against the military ban to the Second Circuit Court of Appeals in *Able v. U.S.A.* on April 12.

Crawford v. City of Chicago
(Illinois)
VICTORY! APPEAL FILED.

This case involves a challenge to the home-rule authority of the City of Chicago to enact a domestic-partner ordinance that gives benefits to qualified same-sex partners of city employees. The ordinance took effect in May 1997, and is opposed by a group of plaintiffs including conservative ministers.

Lambda represents lesbian and gay city employees Cheryl Tadin, Sandra King, and Jared Gulian who have long-time domestic partners and are eligible for benefits under the City's ordinance. In February, Lambda and the City won motions for summary judgment in the Circuit Court of Cook County. Judge Thomas Durkin agreed that under Illinois home-rule law, Chicago has broad authority to determine its employees' benefits and that nothing in Illinois law or policy (including its statutory ban on same-sex marriages) disabled the City from taking this step toward equalizing compensation and solving the benefits gap for its lesbian and gay employees. Our opponents filed a notice of appeal in the Illinois Appellate Court and briefing will go forward this summer.

Patricia Logue is working on the case with Cooperating Attorneys Tracey Kitzman, Joseph Miller, and Faith Gay from the Chicago office of Sidley & Austin.

LaWall v. Pima County
(Arizona)
VICTORY!

On March 13, Arizona Superior Court Judge Allen Minker ruled that the Board of Supervisors of Pima County, Arizona, has the authority to provide health insurance benefits to the domestic partners, and the children of domestic partners, of employees of the County. (See also page 19)

The case was brought in July 1997 by the County Attorney for Pima County challenging the Board of Supervisors' authority to spend county funds on these benefits under state law. We represented five Pima County employees who enrolled their domestic partners for these benefits and who were allowed to intervene in the lawsuit, to advocate that the benefit plan not be overturned.

Jon Davidson was Lambda's attorney on the case. He was assisted by Cooperating Attorney Pamela Liberty of the Tucson firm of Liberty, O'Neil & Bibbens.

A.A.U.P. v. Rutgers, the State University of New Jersey
(New Jersey)
LOSS.

This lawsuit challenged the denial, by Rutgers University and the State of New Jersey, of "dependent" health insurance coverage to lesbian and gay employees with partners. Although New Jersey provides "dependent" coverage — which includes a substantial array of health plan benefits — as part of its compensation package to married Rutgers employees who elect coverage for their spouses, it categorically denies the same benefits to unmarried employees whose partners need insurance.

The New Jersey Supreme Court rejected the plaintiffs' request for review of the New Jersey Appellate Division's 1997 judgment in favor of the State, rejecting the plaintiffs' marital status and sexual orientation discrimination claims under both the New Jersey Law Against Discrimination (LAD) and the state constitution. In particular, the appeals court ruled that an exemption in the LAD shielded all employee benefit plans from any kind of discrimination claim and that the State's administrative convenience and cost justification sufficed to justify its obvious marital status-based criterion for benefit coverage. The plaintiffs are now back in the lower court to proceed on their remaining claims against the University.

Lambda filed an *amicus* brief with the New Jersey Appellate Division and continues to remain involved in advising counsel on the case. Our position is that the New Jersey benefit scheme violates the statutory and constitutional rules against marital-status discrimination, and that the cost and convenience justifications proffered up to now to defend the scheme are factually unfounded and insufficient to justify such unequal employment benefits for its workers.

Suzanne Goldberg authored our initial *amicus* brief. NOW Legal Defense and Education Fund, the ACLU of New Jersey, and two private practitioners in New Jersey represent the plaintiffs.

To view Judge Nickerson's decision in Able v. USA, or Lambda's brief to the Second Circuit in this case, visit www.lambdalegal.org

MILITARY

ABLE v. U.S.A.

(Federal Court, New York)

APPEAL ARGUED.

On April 2, a three-judge panel of the Second Circuit Court heard argument in this appeal. The Clinton Administration seeks reversal of District Court Judge Eugene Nickerson's insightful ruling finding "don't ask, don't tell" unconstitutional.

Judge Nickerson analyzed the government's rationale for maintaining entirely different rules of conduct for lesbian and gay service members than those applied to heterosexuals. He found that accommodating the biases of some service members provided the only basis for the code of silence and celibacy imposed on lesbians and gay men. This, he ruled, violates the U.S. Constitution's equal protection guarantee.

Able is brought jointly with the ACLU. Beatrice Dohrn argued the case before the Second Circuit and works on it with Ruth Harlow and Matthew Coles from the ACLU.

HOLMES v. PERRY AND WATSON v. PERRY

(Federal Court, Washington)

LOSS. PETITION FOR REHEARING *EN BANC* DENIED.

The Ninth Circuit Court of Appeals denied the plaintiffs' petition for rehearing *en banc*. Previously, a panel of the Ninth Circuit, with one judge dissenting, upheld "don't ask, don't tell."

Holmes, a first lieutenant in the California National Guard, won his case in a California federal district court. Watson, a lieutenant in the Navy, lost in the federal district court in Seattle.

As in other appeals on the constitutionality of the ban, Lambda and the ACLU had submitted an *amicus* brief based on the theories put forward in the *Able* case. We did not participate in the petition for rehearing *en banc*. Beatrice Dohrn and the ACLU's Matthew Coles worked on the brief.

FAMILY RELATIONSHIPS

MARRIAGE

BAEHR v. MIIKE

(Hawaii)

NO CHANGE. AWAITING ORAL ARGUMENT.

Briefs from both sides plus more than 20 *amici* are now before the Hawaii Supreme Court, where the State's appeal of our victory is pending. (See page 8) Meanwhile, Hawaii residents will vote in November on a proposed constitutional amendment intended to authorize the legislature to restrict marriage to different-sex couples.

This breakthrough case continues to represent the most likely legal path toward winning the freedom to marry for lesbian and gay couples. Judge Kevin Chang's landmark 1996 ruling found that the State of Hawaii had failed to show any compelling reason why lesbian and gay couples should be denied the freedom to marry; Judge Chang ordered an end to sex discrimination in marriage, staying his injunction to permit the State to appeal again to the state high court, which had declared the denial of marriage to same-sex couples to be sex discrimination in May 1993.

Lambda co-counsel Dan Foley, through Marriage Project/Hawaii (formerly HERMP), is working with Marriage Project Director Evan Wolfson on the case.

BAKER v. VERMONT

(Vermont)

NEW CASE!

Lambda filed a friend-of-the-court brief before the Vermont Supreme Court in this suit brought last year by three couples challenging the state's denial of their freedom to marry. In December, the trial court dismissed the couples' claims.

The court found that all but one of the State's efforts to defend its discrimination lacked even a "rational relationship to the exclusion of same-sex couples from the institution of marriage." While it said the remaining state rationale (promotion of an asserted link between procreation and child-raising) was "not flawless," the court found it sufficed under a highly deferential standard of review to justify the "different-sex requirement" imposed on civil marriage despite what it called the "clear and sensible arguments" refuting that rationale. Our brief shows that heightened scrutiny is required and that the State is discriminating on the basis of sex and sexual orientation in infringing on the fundamental freedom to marry alone. We argue this is in violation of the Vermont Constitution, which prohibits injuring or favoring "any single person, family, or set of persons" without sufficient cause and connection.

A powerful array of *amicus* briefs (legal, religious, psychological, etc.) is now before the Vermont Supreme Court, which will hear argument later this year. The case is being litigated by Susan Murray and Beth Robinson of Vermont's Langrock, Sperry & Wool and Mary Bonauto of New England's Gay & Lesbian Advocates & Defenders (GLAD). The Vermont Coalition for Lesbian and Gay Rights and People For the American Way Foundation joined Lambda on our brief, written by Evan Wolfson and Cooperating Attorneys Elizabeth Foster and Lawson Vicario of Gibson, Dunn & Crutcher, and local counsel Richard Cassidy.

CUSTODY AND VISITATION

OPENSHAW v. OPENSHAW

(Alabama)

LOSS.

The Alabama Court of Civil Appeals has refused to lift a trial court order that restricted the visitation rights of our client, Dr. Joseph Openshaw, by prohibiting contact between his two children and his partner, Kenny White.

The court issued no opinion, but merely announced that the trial court judge's order had been affirmed. That judge had heard evidence that Dr. Openshaw's daughter and son were thriving at school after being "exposed" to their father's relationship, and that they enjoyed close and caring interactions with White. Also before the court were two opposing expert witnesses. One was a highly qualified psychologist who testified that lesbians and gay men display parenting skills that are equal to those of heterosexuals; the other was a family counselor, trained in religion rather than psychology, who testified ominously that the children would be harmed by their father's gay identity, even as he conceded that no published studies supported his claims. The trial judge's restriction was broader than Dr. Openshaw's former wife had sought, yet the appellate court affirmed it without explaining why. This bitter disappointment comes on the heels of a homophobic decision by the state supreme court in a similar case.

Steve Scarborough was co-counsel with David Gespass of the firm of Gespass and Johnson in Birmingham, Alabama.

BINAUT V. MANGUS
(Pennsylvania)
NEW CASE!

This case involves two lesbians who raised a child together for three years. After the women's relationship ended, the biological mother cut off all contact between the other mother, Tracie Binaut, and their daughter. When Binaut sued for visitation, the trial court correctly ruled that she stood *in loco parentis* to the child and that visitation was in the child's best interests.

The biological mother, Lorrie Mangus, has appealed. Lambda came into the case as *amicus*, filing a brief in support of Binaut with the Pennsylvania Superior Court. Lambda seeks to ensure that Pennsylvania's good *in loco parentis* law is applied evenhandedly to lesbian and gay parents, just as it would be applied to other parents. By participating in this case and in *J.A.L.*, below, Lambda aims to solidify the law in one of the best states in the country for maintaining parent-child relationships after lesbian and gay couples split up.

Leslie Cooper, Daniel Kaufman and William Hibsher of Robinson, Silverman, Pearce, Aronsohn & Berman wrote the *amicus* brief. Donald J. Martin of Norristown, Pennsylvania, served as local counsel. Ruth Harlow is Lambda's attorney on the case.

PULLIAM V. SMITH
(North Carolina)
NO CHANGE. AWAITING DECISION.

This is an appeal from a ruling of a North Carolina county court removing Fred Smith's two sons from his custody because he's gay and had been living with his partner for several years at the time of the trial court's decision. The ruling is replete with factual distortions, ill-supported assumptions, and homophobia. For example, the court allowed questions about and then relied on the particulars of the men's sex life. However, the mother's testimony about her sex life was deemed irrelevant. Custody of the boys, who had lived with their father their whole lives, was shifted in July 1995 when they were seven and nine years old.

In May 1997, the North Carolina Supreme Court heard oral argument on the appeal of the state court of appeals' decision, which found the trial court's decision to remove custody was unsupported by evidence of harm to the children caused by their father. Where there is no harm to the children, there is no basis in North Carolina law to modify an existing custody arrangement.

Beatrice Dohrn represents Smith together with Ellen Gerber and Sharon Thompson of N.C. Gay and Lesbian Attorneys.

BOSWELL V. BOSWELL
(Maryland)
PETITION FOR REVIEW GRANTED.

The Maryland Court of Appeals has granted review of our victorious decision from the Court of Special Appeals. That court vacated the stringently anti-gay visitation restrictions that the trial court had imposed on this gay father. The trial court had ordered: "There is to be no overnight visitation and under no circumstances is there to be any visitation of the children with the father in the presence of [father's partner] or anyone having homosexual tendencies or such persuasions, male or female, or anyone that the father may be living with in a non-marital relationship."

There were no allegations whatsoever of misconduct or harm to the children such as to justify the radical and onerous burden imposed by the court. The children at the time of the latest ruling were six and nine; the father, Glenn Boswell, lives with the partner who is named in the order. Until the court imposed the limitations, they had spent considerable time together, as a family, including with overnight visits.

The appellate court's opinion does as we urged. It applies to this case the Maryland law that has long been established in cases concerning heterosexual parents. That law requires that a parent's involvement in a non-marital sexual relationship will not, in itself, affect that parent's custody or visitation.

Nancy Polikoff, family law expert and professor at American University, Washington College of Law, represented Boswell on appeal as Lambda's cooperating attorney, with assistance from Beatrice Dohrn. Andrea Colender, a private Maryland practitioner who represented Glenn Boswell prior to Lambda's participation, continues to assist in the litigation.

PACKARD V. PACKARD
(Florida)
LOSS.

On reconsideration, the trial judge reinstated his order granting custody to the children's father. Because Florida's First District Court of Appeals had rejected the court's exclusive reliance on its belief that the father would provide the "more traditional family environment," the court's new opinion pays lip service to other factors that purportedly favor the father's bid for custody. Of course, no evidence showed that the father's family (which included a new partner and three children) was more "traditional," or, more importantly, that "traditional" families are better for kids.

However, further action is unlikely in this case, as it involves an initial grant of custody rather than the more common scenario where a former spouse seeks modification of an order that granted custody to a parent who later identifies as lesbian or gay. In deciding initially who gets custody, the trial court has broad latitude to examine the children's best interests and to come to a decision regarding their custody.

Beatrice Dohrn, with the help of former intern Deirdre Runnette, authored Lambda's *amicus* brief, which was joined by the Gay and Lesbian Lawyers Association of Florida. Julie Packard is represented by Jason Scott Coupal of Hollywood, Florida.

J.A.L. V. E.P.H.
(Pennsylvania)
NO CHANGE.

This case, now on appeal for the second time, involves a custody and visitation dispute between two lesbian mothers who together planned for and raised a child during their nine-year relationship. Although the women initially were able to agree on a visitation schedule after their break-up, the biological mother ultimately halted all visitation between the non-biological mother and the child.

In September 1996, the Pennsylvania Superior Court held that J.A.L., the non-biological mother, should be allowed to seek visitation and partial custody of the child and sent the case back to the trial court. In April 1997, that court ruled against J.A.L., who is preparing an appeal.

Kim Kirkley and Beatrice Dohrn filed an *amicus* brief in the Pennsylvania Superior Court that helped bring about the favorable

LAMBDA 25

In 1998, Lambda celebrates its 25th anniversary as it continues to achieve equality under law for lesbians, gay men, and people with HIV/AIDS. During the past twenty-five years, Lambda has achieve an incredible record of success, winning important victories on behalf of lesbian and gay youth, couples, parents, workers, members of the military, people with HIV/AIDS, and many more.

Despite our remarkable progress in challenging discrimination, inequality of great importance remains: abuse in the nation's schools, exclusion from marriage and its benefits, no federal protection from employment discrimination, and the ever-present fear that our families are not protected, guarantee the persistence of second-class citizenship.

Help us celebrate our anniversary and continue our struggle for civil rights by rededicating your support of Lambda today.

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precedent regarding a non-biological mother's right to petition for custody and visitation, but did not participate in the trial. Former Board Member Andrew Chirls of Wolf, Block, Schorr and Solis-Cohen was local counsel on the brief. J.A.L. is represented by National Center for Lesbian Rights Cooperating Attorney Bernard Faigenbaum.

FIRST AMENDMENT

Southworth v. Grebe
(Federal Court, Wisconsin)
AWAITING ARGUMENT/DECISION.

Lambda entered this case as *amicus* to protect the free speech and associational rights of all college students and to thwart this most recent in a long string of efforts to silence and disband lesbian and gay campus groups.

Several conservative law students, represented by the Virginia-based Alliance Defense Fund, filed suit to prevent the University of Wisconsin at Madison from funding certain progressive student groups, including the Lesbian, Gay and Bisexual Campus Center, with their student fees. Asserting a constitutional right not to fund speech with which they disagree, the students won a favorable decision from District Judge John Shabaz (the same judge who initially dismissed Jamie Nabozny's lawsuit).

Judge Shabaz ruled that the Center (which is apolitical and offers counseling and educational services) was advancing a "homosexual agenda" of political and ideological views and that, under the First Amendment, students cannot be forced to fund such expression. He later issued an injunction ordering the University to stop all funding of any student group engaging in political and ideological advocacy. This order was stayed and a follow-up appeal was taken.

Lambda has filed two *amicus* briefs in different stages of the Seventh Circuit appeal, both on behalf of itself and the Center. Lambda's briefs argue that the University's means of funding student groups is a content-neutral and constitutional mechanism that furthers all students' education by encouraging a wide range of expression from many different viewpoints. The First Amendment is violated, not by the University, but by the court's attempt to force the University to censor student speech, especially on the vague and impermissible ground of political or ideological content. We are awaiting either a decision or a second round of oral argument.

Patricia Logue and Ruth Harlow co-wrote the *amicus* briefs for Lambda and the Center. The University is represented by the Attorney General of Wisconsin.

HOUSING

Phipps v. Santiago
(New York)
DISCOVERY PROCEEDING.

This case is about the unfair treatment of a lesbian couple and their family in subsidized housing. Our clients, Ivonne Santiago, Jeanette Santos, and their two children, have been a family for seven years. All four have been living in a studio apartment in income-based housing while on a waiting list for a larger apartment in the same complex. Now, the landlord seeks to evict them, alleging "overcrowding." Preliminary investigation raises serious concerns about discriminatory treatment of the lesbian couple's family versus other families on the waiting lists and in overcrowded situations. The judge adjourned the matter for Lambda to obtain evidence from the defendants.

David Buckel is representing the couple.

Thomas, et al. v. Anchorage Equal Rights Commission, et al.
(Federal Court, Alaska)
NO CHANGE. AWAITING DECISION.

This is another in the series of cases to address whether claims of interference with religious freedom can be used to eviscerate anti-discrimination laws (here, a provision of the Anchorage municipal code). Like the others, this case concerns housing discrimination; likewise, the theory involved could be used to challenge protections against discrimination in employment and public accommodations. *Thomas* was filed in federal district court in Anchorage; the appeal now underway is to the Ninth Circuit Court of Appeals.

This challenge is by two landlords, and it addresses the municipal code provision barring marital status discrimination in housing. They argue that renting to an unmarried, mixed-sex couple — who, they presume, will have sex together — would burden their personal religious practices, which forbid "facilitation" of other people's anticipated "fornication."

The trial judge agreed with the landlords' expansively phrased religious liberty claims. Weighting his opinion with footnotes cataloguing the landlords' biblical references, the judge rejected the City's arguments that government has a compelling interest in ending discrimination, and that tenants' rights of privacy and intimate association place important limits upon landlords' free-exercise rights.

We submitted an *amicus* brief supporting the City's appeal, focusing upon the extraordinarily broad nature of this exemption from Alaska's civil rights laws and its impact upon the third parties who experience real harm from housing discrimination, whatever its motivation. In our brief, we highlight the significance of this exemption for lesbians and gay men who still cannot marry in any state. Clyde Wadsworth of Heller Ehrman White & McAuliffe prepared Lambda's brief, with assistance from Jennifer Pizer.

IMMIGRATION

In re Pitcherskaia
(Federal Court, California)
NO CHANGE. AWAITING DECISION.

We are back before the Board of Immigration Appeals (BIA) seeking asylum for Alla Pitcherskaia, a Russian lesbian who suffered and continues to fear persecution in Russia based on her sexual orientation and political opinions. The case was sent back to the BIA last June to determine whether Pitcherskaia proved her fear of persecution is well-founded, following a victory in the Ninth Circuit Court of Appeals that overturned the BIA's previous ruling that persecution was not shown where the Russian persecution of lesbians was designed to "cure" rather than punish them.

Moscow police had detained Pitcherskaia multiple times, threatened her with involuntary psychiatric hospitalization and electroshock treatment to change her sexual orientation, and refused to provide her with assistance when she was threatened by organized criminals, all on account of her being a lesbian and gay rights activist.

Suzanne Goldberg wrote the brief to the BIA, along with Lambda's co-counsel Ignatius Bau of San Francisco.

Matter of Tenorio
(Board of Immigration Appeals)
NO CHANGE. AWAITING DECISION.

Marcelo Tenorio, a Brazilian gay man, is seeking asylum in the United States based on the fear that he would be persecuted or killed if he returned to his home country. In July 1993, an immigration judge granted Tenorio political asylum. The INS appealed the decision to the Board of Immigration Appeals (BIA), arguing that Tenorio failed to present sufficient evidence to prove the Brazilian government's inaction against paramilitary death squads that target gay men.

Lambda filed an *amicus* brief defending the judge's initial grant of political asylum and his evaluation of testimony presented both by Tenorio and a leader of Brazil's gay community, Luis Mott, Ph.D., who has extensively monitored the anti-gay attacks and the lack of response by police and government officials.

Suzanne Goldberg wrote Lambda's *amicus* brief to the BIA.

MATTER OF YANEZ-FLORES

(Board of Immigration Appeals)

NO CHANGE. AWAITING DECISION.

This case concerns an asylum claim by Yoni Julisa Yanez-Flores, a Honduran lesbian. At age 15, while living in Honduras, Yanez-Flores was gang- raped by a group of men because she is a lesbian. In Honduras, rape of a woman over age 11 is not a crime, so Yanez-Flores had no recourse against the perpetrators. She fears that, if forced to return to Honduras, she will have to remain completely invisible as a lesbian to avoid more homophobic brutality. The immigration judge in Florida, where Yanez-Flores currently resides, denied her asylum, finding that she was not suffering from persecution by non-governmental agents whom the government could not or would not control. We assert that the absence of a criminal law prohibiting rape amounts to the government's failing to control Yanez-Flores' persecutors.

Yanez-Flores has appealed to the Board of Immigration Appeals, where her case is currently pending.

Lambda joined an *amicus* brief written by Shannon Minter of the National Center for Lesbian Rights. Suzanne Goldberg is Lambda's attorney on the case.

Celebrate Lambda's 25TH Anniversary! See page 20 for a list of special events.

YOUTH

EAST HIGH GAY/STRAIGHT ALLIANCE V. BOARD OF EDUCATION

(Federal Court, Utah)

NEW CASE!

This case challenges a school district's refusal to allow a group of lesbian, gay, and bisexual students to meet with one another and their heterosexual supporters on their public high school's premises.

Lambda is acting as lead counsel in this case, brought with several other public interest organizations, on behalf of the East High Gay/Straight Alliance and two of its student members against the Salt Lake City School Board and Salt Lake City School District superintendent and assistant superintendent for curriculum. The suit is based on the federal Equal Access Act, which applies to public schools that receive federal funding and that allow some student groups not directly related to school curriculum to meet on school premises. The Act prohibits such schools from denying equal access to any other groups of students on the basis of the content of their speech. The suit also presents claims under the First and Fourteenth Amendments of the U.S. Constitution for violation of the students' freedoms of speech and association and rights of due process and equal protection. On May 28, we secured an initial victory when we convinced the court to deny the superintendents' motion to be released from being defendants in the case.

Jon Davidson and David Buckel represent the plaintiffs, along with Kate Kendell and Shannon Minter of the National Center for Lesbian Rights, Kelli Evans of the ACLU Foundation of Northern California, ACLU of Utah Foundation cooperating attorneys Laura Milliken Gray and Marlin Criddle, and Lambda Board Member Wayne Braveman of the law firm of Heller Ehrman White & McAuliffe.

MURRELL V. SCHOOL DISTRICT NO. 1

(Federal Court, Colorado)

AWAITING DECISION.

This case before the Tenth Circuit Court of Appeals involves a public school's liability for failing to stop boy-on-girl sexual harassment under Title IX, the federal statute that prohibits sex discrimination in federally funded schools. Lambda is supporting arguments by a female student and her family against the school district's contention that Title IX does not cover student-on-student sexual harassment except in very limited circumstances.

Title IX is of particular importance to Lambda's work on behalf of youth. The federal government recently issued new Title IX guidelines that for the first time mention "lesbian and gay students" and explain how Title IX may apply in some circumstances of harassment against them in schools. Oral argument took place in March.

Our *amicus* brief was authored by David Buckel and Ruth Harlow.

Help Support Lambda's Work

SCOUTS

DALE V. BOY SCOUTS OF AMERICA

(New Jersey)

VICTORY!

In March, the New Jersey Appellate Division handed us a thrilling victory with a landmark ruling against anti-gay discrimination by the Boy Scouts of America (see article on page 6).

Reversing the viciously anti-gay lower court ruling against our client, James Dale, the court found that BSA, like other large organizations holding themselves out as open to the public, is a "public accommodation" subject to the New Jersey Law Against Discrimination. The court also rejected the BSA's asserted first amendment defense, finding that the core expressive purposes for which members join Scouting do not include anti-gay prejudice or any values or activities that gay youth and men cannot share. The powerful opinion marked a triumph for gay youth, a statement on the fitness of gay men as role models, and, as a rare appellate holding under a gay civil rights law, a vindication of anti-discrimination laws. BSA is now appealing the decision — the first appellate defeat for its discriminatory policy — to the New Jersey Supreme Court.

Lambda filed this case in 1993, the first under New Jersey's law prohibiting sexual orientation discrimination. Evan Wolfson argued the appeal and represents Dale, along with co-counsel Cleary, Gottlieb, Steen & Hamilton and local counsel Lewis Robertson. David Buckel has assisted in this case, as did a number of professional associations, religious groups, and gay organizations, who submitted *amicus* briefs in support of Dale.

Curran v. Mount Diablo Council of the Boy Scouts of America
(California)

LOSS.

Filed in 1981, this was the oldest pending challenge to the Boy Scouts' anti-gay policies. Brought on behalf of former Eagle Scout Tim Curran, the case asserted that the Boy Scouts of America's policy excluding all "known or avowed homosexuals" violates California's law prohibiting discrimination by business establishments.

The California Supreme Court ruled on March 23 that the BSA is not subject to California's anti-discrimination law. Because the ruling was based solely on state law, it ends this case. Efforts to change the BSA anti-gay policy continue with Lambda's *Dale* case in New Jersey and with lawsuits currently pending in Chicago and Washington, D.C. In addition, the California Supreme Court's ruling prompted strong criticism of BSA policy, with editorials from such diverse sources as the Los Angeles Times, the St. Louis Post-Dispatch, the Pittsburgh Post-Gazette, the Daily Iowan, the San Francisco Chronicle, the Dayton Daily News, and the Arizona Daily Star.

Curran was represented by Jon Davidson, who became involved when he was staff counsel at the ACLU of Southern California and continued in this case on the ACLU's behalf, along with ACLU/SC Staff Attorney Taylor Flynn. Lambda acted as co-counsel.

ADMINISTRATIVE ADVOCACY

GLASS v. IRS
(North Carolina)

CONTINUING INVESTIGATION.

In an effort to determine whether the scope of anti-gay bias at the IRS merits further attention, we are awaiting full compliance with our Freedom of Information Act (FOIA) request. That request will force the IRS to reveal documents related to its processing of both gay and non-gay youth groups' request for tax-exempt status. The FOIA request follows our successful demand that the IRS withdraw its request to a support group, the Gay and Lesbian Adolescent Support System, or GLASS, for proof that the group would not promote "homosexual attitudes" as a precondition to being granted tax exemption.

As a result of the extensive reporting on Lambda's victory in the *GLASS* case, we have also received and accepted an invitation to submit evidence to the Joint Committee on Taxation of the U.S. Congress, which is investigating politically-motivated conduct by the IRS. We completed our submission in early 1998.

David Buckel is conducting the IRS work with help from Steve Munro of Arnold & Porter in Washington, D.C.

Wagner v. Fayetteville Public Schools
(Arkansas)

INVESTIGATION PROCEEDING.

This case involves a complaint before the U.S. Department of Education's Office of Civil Rights that the Fayetteville Public Schools violated Title IX by failing to meaningfully address the relentless harassment of William Wagner while he was in eighth to tenth grade. That harassment culminated with a brutal gay-bashing by ten youth who broke William's nose in two places and bruised his kidneys. In this case, Lambda urges that Title IX applies when a school ignores harassment of a boy based on his perceived "effeminacy," or in instances of sexual harassment. The Wagner's complaint is the first of its kind to proceed under the recent federal guidelines for Title IX that specifically recognize that "lesbian and gay students" are protected from sexual harassment and other forms of sex discrimination. Lambda will encourage OCR to give the fullest meaning to its mission of equal access to education, and to explore how useful its administrative process can be.

David Buckel is representing Wagner in the OCR administrative proceeding.

Kathys' Group v. IRS
(Rhode Island)

NEW CASE! VICTORY!

In a swift response to Lambda's demand, the IRS has granted a group for lesbians with cancer tax-exempt status. This case builds on the work we commenced in the GLASS case which first brought to our attention the likelihood of a pattern of anti-gay attitudes at the IRS. Kathys' Group's mission is to provide support and resources to lesbians (and their families) who have been diagnosed with cancer. When it applied for tax-exempt status, the IRS responded by requesting an amendment to the group's mission, requiring that it provide resources to "any women who have been diagnosed with cancer." The agency suggested that directing services to lesbians would not justify receiving tax-exempt status. Lambda demanded that the IRS drop the requirement that the group alter its mission, and sixteen days later the IRS granted tax-exempt status without the mission change.

Support groups for lesbians with cancer are very important, particularly because lesbians have a disproportionately high incidence of breast cancer. Several factors contribute to that higher incidence, including lower rates of pregnancy at a young age, and lesbians suffer further complications arising from their lower rates of seeking preventative health care because of anti-gay attitudes in mainstream health care. We will use the Kathys' Group example, together with the *GLASS* case, to urge the IRS to address anti-gay bias in the agency.

David Buckel represented Kathys' Group.

REPRODUCTIVE RIGHTS

United States v. Lynch
(Federal Court, New York)

NO CHANGE. AWAITING DECISION.

The government brought suit in the fall of 1995 against two anti-choice protesters with a long history of disrupting access to a clinic in Dobbs Ferry, New York, culminating in a May 1995 blockade. In February 1996, the trial judge District Judge John Sprizzo of the Southern District of New York entered a permanent injunction prohibiting the defendants from impeding or obstructing access to the clinic. Seven months later, the defendants violated the injunction by sitting in the clinic driveway, thus preventing several vehicles from entering the parking lot. The court found defendants in civil contempt of the injunction.

However, in January 1997, Judge Sprizzo dismissed the criminal contempt charge. The much-publicized opinion credited the defendants for acting with "sincere, genuine, objectively based and, indeed, conscience-driven religious belief." Thus, Judge Sprizzo reasoned, the defendants did not act with the requisite willfulness to sustain a criminal contempt finding. The court's holding rested on two grounds: an analogy between anti-abortion protesters and conscientious objectors, and the doctrine of jury nullification, under which a fact-finder can refuse to convict a defendant even when the facts indicate guilt.

The New York Civil Liberties Union (NYCLU) authored an *amicus* brief which Lambda joined, arguing that even though the principle of double jeopardy bars the reversal of the acquittals, the Second Circuit should reject the reasoning of Judge Sprizzo's decision. Federal and state courts across the country have repeatedly repudiated a religious defense to prosecution for criminal anti-choice activity. The failure to do so, moreover, would thwart Congress' intent in passing the Freedom of Access to Clinic Entrances Act (FACE). Congress enacted FACE to combat a widespread campaign of violence aimed at preventing health care providers from offering, and women from obtaining, reproductive health care services.

The brief was written by NYCLU attorneys Yueh-ru Chu and Donna Lieberman, with NYCLU cooperating attorney Labe Richman. It also was joined by the American Jewish Congress, the National Emergency Civil Liberties Committee and the Westchester Coalition for Legal Abortion. Beatrice Dohrn is the attorney on this case.

CRIMINAL LAW

Picado v. Bryant
(Arkansas)

NEW CASE!

In this case, Lambda challenges an Arkansas law that criminalizes same-sex sexual relations while not subjecting heterosexual couples to the criminal penalties for the same behavior. A violation of the law can result in incarceration for up to a year. (See page 19)

Lambda argues that the law harms the seven lesbian and gay plaintiffs by (1) putting them at risk of prosecution; (2) subjecting them to an unequal law; (3) imposing the label of "criminal" on them, even absent prosecution; and (4) creating the risk that they will suffer collateral harms because of the law, such as loss of child custody, housing, or employment. These harms violate the plaintiffs' rights to equal protection of the laws and privacy under the Arkansas and United States Constitutions. Shortly after receiving Lambda's complaint, the defendants – Arkansas' Attorney General and Little Rock's prosecuting attorney – asked the chancery court to dismiss the case without reaching the merits of our claims, arguing, in part, that since the law has not been enforced against consensual same-sex couples in private, the plaintiffs have not been harmed. We responded quickly, arguing that the law is in full force as part of law enforcement's arsenal and that the daily harms the plaintiffs suffer because of the law must be redressed. Lambda has also asked the court for permission to sue the entire class of prosecuting attorneys, with the Little Rock prosecutor as class representative. Both of these motions are currently pending.

Suzanne Goldberg and Ruth Harlow are Lambda's attorneys on the case. David Ivers and Emily Sneddon of the Little Rock firm Mitchell, Blackstock & Barnes are Lambda's cooperating attorneys. Little Rock solo practitioner Gary Sullivan is of counsel to Lambda on the case.

State v. Anthony Powell
(Georgia)

NEW CASE! APPEAL ARGUED.

Lambda has filed a friend-of-the-court brief in support of a Georgia man who is challenging the state's "sodomy" law as a violation of the state constitutional right to privacy. Sentenced to five years in prison on a sodomy conviction alone, Powell had been accused of rape. He was acquitted after he testified that the sex was consensual but "admitted" engaging in oral sex with a woman in his own home. Lambda's brief not only argues that the state constitution does not tolerate criminal penalties for consensual sex in a private place, but also urges the Georgia Supreme Court to strike the law down in its entirety, rather than immunizing heterosexual sex while retaining penalties for same-sex sexual conduct.

The Georgia Supreme Court has asked the Attorney General's office to defend the constitutionality of the statute. Oral argument was held in mid-May, and a decision is pending. Steve Scarborough wrote Lambda's friend-of-the-court brief, which was joined by the Georgia Association of Criminal Defense Lawyers, Stonewall Bar Association, Georgia Equality Foundation, and Atlanta Executive Network.

Wilkerson v. Municipal Court
(California)

NO CHANGE.

This appellate proceeding, like *Chapman v. Municipal Court*, arose from lewd conduct prosecutions in which trial courts denied defendants discovery aimed at showing the disparate enforcement of the law against gay men in Los Angeles. In response to our arguments in the *Chapman* case, the California Supreme Court in June 1997, ordered the court of appeals to decide whether the documents should be produced.

Wilkerson raises these questions again, as the L.A. City Attorney's office dismissed all criminal charges in the *Chapman* case, rendering the case moot (a move we believe the District Attorney took to evade further examination of this issue). We are handling the appellate proceedings on behalf of three men who each were arrested in an area near the L.A. airport that also is used as a "lovers' lane" by heterosexuals, who are not subjected to arrest. Our request that the court of appeals consider the reasons, founded in notions of equal protection, that this discovery should be allowed was summarily denied in November 1997. In response, we again are asking the California Supreme Court to intervene, as it did in *Chapman*, in order that the constitutional issues be fully considered and resolved.

Jon Davidson and Myron Quon are representing the petitioners in this writ proceeding, with cooperating attorneys Sean SeLegue of the San Francisco law firm of Rogers, Joseph, O'Donnell & Quinn and Henry Doering of the San Francisco Public Defender's Office. We are being assisted by Gus May of the Center for Law in the Public Interest.

Burdine v. Scott
(Federal Court, Texas)

NO CHANGE. HABEAS CORPUS PROCEEDINGS UNDERWAY.

Calvin Burdine is a gay man who was convicted of capital murder, after having representation that charitably can be characterized as "ineffective" (his trial counsel slept through significant portions of the trial). During the sentencing phase of his trial, the prosecutor urged the jury to sentence Burdine to death by arguing that sending "a homosexual to the penitentiary certainly isn't a very bad punishment for a homosexual"— implying that a gay man would enjoy being incarcerated with other men under the circumstances, including male rape, typical for a prison. The prosecutor also suggested Burdine presented a danger to the community based on Burdine's 1971 conviction for consensual sodomy. Burdine was sentenced to death.

Shortly before he was scheduled to be executed, Lambda and a group of civil rights organizations filed an *amicus* brief in support of Burdine's petition for a writ of *habeas corpus* and a stay of his execution. We argue that the prosecutor's deliberate appeal to the anti-gay prejudices of the jury, including his suggestion that gay people deserve the death penalty, violated Burdine's rights under the Eighth and Fourteenth Amendments. A federal district court judge has ordered the execution stayed and has begun further proceedings in the case.

Donna Dennis of Richard Spears Kibbe & Orbe, David Kahne of the Clark Read Civil Liberties Foundation, and Ruth Harlow authored the *amicus* brief. The National Lesbian and Gay Law Association and the Texas Human Rights Foundation also joined Lambda on the brief.

Minnesota AIDS Project

Heather Sawyer was the keynote speaker at the "HIV and the ADA" LifeLine Forum in Minneapolis in March. Pictured (left to right) are forum moderator and Minnesota AIDS Project (MAP) executive director, Lorraine Teel, featured speaker and MAP staff attorney, Lynn Mickelson and Sawyer .

AIDS-Related Discrimination

PUBLIC ACCOMMODATIONS

Randon Bragdon, D.M.D. v. Sidney Abbott, et al.
(U.S. Supreme Court)

NEW CASE! AWAITING DECISION.

This case is both the first time the U.S. Supreme Court has heard an HIV/AIDS discrimination case, and the first time it will interpret the critically important Americans with Disabilities Act. Sidney Abbott filed suit against Randon Bragdon, a dentist who refused to fill a cavity for her based on her indication that she was HIV positive.

The central issue in this case is whether people who have HIV but appear asymptomatic are considered "disabled" and therefore covered under the ADA. In addressing this issue, the Court will consider whether the impact of HIV on a person's ability to engage in procreative activities constitutes the "significant impairment of a major life activity" necessary to qualify one as a person with a disability under the Act. Finally, the Court will address Bragdon's argument that medical professionals should be able to refuse to provide treatment to someone with HIV if they "reasonably" believe that to provide treatment would place them at risk of infection.

Lambda took a leading role in coordinating the *amicus* strategy in this case and, together with Whitman-Walker Legal Clinic, filed an *amicus* brief on behalf of 16 national public health and medical organizations and individuals, including the Infectious Diseases Society of America, the American Association of Dental Schools, the State and Territorial Dental Directors, the American Public Health Association, and others. Catherine Hanssens coordinated the *amicus* participation and co-wrote the brief with Dan Bruner and Liz Seaton of the Whitman-Walker Legal Clinic, with assistance from Heather Sawyer.

Baksh v. Human Rights Commission
(Illinois)

NO CHANGE. AWAITING DECISION.

In this case, a dentist has appealed the Illinois Commission on Human Rights' ruling against him due to his refusal to treat, and subsequent referral of, a patient with AIDS. In June 1996, the Commission issued its decision against dentist Karim Baksh, finding that the referral of an HIV-positive patient for services that he could have provided violated the Illinois Human Rights Act. That ruling was significant in stating that the Act covers dental and medical offices as places of public accommodation that may not discriminate against persons with disabilities.

Baksh appealed the Commission's ruling, arguing, among other things, that dentists are not covered by the Act because "private" dental offices are not places of public accommodation and that his refusal to treat an HIV-positive patient and referral of that patient to another dental clinic was appropriate treatment and not unlawful.

Lambda and the Chicago Lawyers Committee for Civil Rights Under Law, Inc. filed an *amicus* brief on behalf of the patient, who died prior to issuance of the Commission's final ruling and whose estate is represented by Roger Leishman of the ACLU of Illinois. Heather Sawyer prepared the *amicus* brief.

Doe v. Illinois Masonic Medical Center, Dr. Martin Greenberg, and Humana Health Care Plans
(Illinois)

NO CHANGE. INVESTIGATION PROCEEDING.

When our client, John Doe, refused to submit to HIV testing that was not medically necessary for his treatment, his scheduled surgery was canceled and he was informed that the surgeon, Martin Greenberg, would not operate until Doe was tested. After much effort to clarify the reasons for the testing, and after consistently being told that an HIV test was necessary to ensure the safety of Dr. Greenberg and his staff, Doe contacted Lambda.

In negotiations with Greenberg, Illinois Masonic Medical Center, and Humana Health Care Plans, Lambda requested that all parties provide treatment to Doe without requiring or conditioning treatment on his submission to unnecessary HIV testing and also requested written confirmation of their policies regarding HIV testing. In response, the three parties indicated that they would treat Doe in the future but refused to clarify their policies and practices regarding HIV testing generally.

To ensure that in the future neither John Doe nor any other patient of Greenberg or Illinois Masonic would be forced to undergo unnecessary HIV testing as a precondition to receiving medical care, Lambda filed a complaint with the Department of Justice in May 1997. Investigation of that complaint is underway, as we continue negotiations with Illinois Masonic to develop an appropriate institutional policy on HIV testing of patients.

Heather Sawyer represents Doe before the Department of Justice.

EMPLOYMENT

BERNSTEL V. INGERSOLL-DRESSER
(Florida)
LOSS.

David Bernstel, a South Florida man who alleged that he was fired from his job as a sales engineer when his employer learned he was HIV positive, suffered a disappointing loss when a Miami federal judge granted the employer's motion for summary judgment. Despite strong circumstantial evidence to the contrary, the court found that Bernstel had failed to raise an issue of fact as to whether his employer knew about his disability prior to discharging him.

In the wake of a federal appellate decision from Maryland that excluded asymptomatic HIV as a "disability" covered by the ADA, Lambda entered the case to argue that all persons with HIV illness are covered by the statute, whether or not they have observable symptoms. Steve Scarborough, acting of counsel to Bernstel's attorney, David Pollack, wrote the portion of Bernstel's summary judgment brief that addressed the applicability of the statute. The court expressly declined to rule on the issue, resting its decision on other grounds — but the United States Supreme Court will soon address the issue in the pending case of *Bragdon v. Abbott.*

BELL V. WELLS FARGO
(California)
VICTORY!
PETITION FOR REVIEW PENDING.

In April, the California Court of Appeal affirmed the right of people with HIV who also are eligible for disability benefits to challenge workplace discrimination. The ruling reversed a trial court's dismissal of an AIDS discrimination claim by an employee — the worker had filed for disability benefits after being forced out of his job because new management revoked a reasonable accommodation for his health condition.

This case is a classic example of the misapplication of "judicial estoppel," a legal principle created to keep plaintiffs from making completely contradictory legal arguments to win cases. Andrew Bell's employer previously had accommodated his HIV-related disability with a four-day work week that included limited travel and telecommuting. With that arrangement, Bell excelled at his job, exceeding work requirements and receiving favorable evaluations. When a new management team revoked this accommodation, Bell was unable to keep working, and he applied for and qualified for disability benefits. The lower court incorrectly reasoned that once the employee claimed, on the benefits application, that he was unable to work *without* the necessary accommodation, he could no longer argue that he could do the job with such an accommodation.

In reversing, the appellate court noted that an employee's later application for disability benefits should not be a "death sentence" for his claim that the revocation of an accommodation was discriminatory. This issue is of increasing importance to people with HIV, who frequently need flexibility in their work schedules to accommodate their health needs. The employer intends to petition for review by the state's highest court.

In July 1997, Lambda filed an *amicus* brief, joined by the AIDS Legal Referral Panel, the Los Angeles Center for Law and Justice, and the Western Law Center for Disability Rights, in support of Bell's appeal of the trial court's dismissal of his discrimination claim. Jon Davidson, Catherine Hanssens, and Myron Quon authored Lambda's brief.

EMPLOYMENT-RELATED BENEFITS

PETER CASTELLANO, ET AL. V. CITY OF NEW YORK
(Federal Court, New York)
VICTORY!

This case represents the first time the Second Circuit Court of Appeals has considered whether former employees who qualify for employment-related disability benefits have standing as "qualified individuals with disabilities" to sue under the Americans with Disabilities Act when these benefits are allocated in a discriminatory fashion. The plaintiffs were a group of retired New York City police officers who alleged that the practice of providing supplemental payments in addition to the basic pension benefits to police who retire after 20 years of service, but not to those who are forced to retire earlier because of a disability, violates the ADA and the Rehabilitation Act. The court of appeals concluded that former employees have the right to challenge discrimination in work-related benefits (e.g., disability benefits, pension benefits, COBRA health care insurance) under the ADA's Title I provisions prohibiting employment discrimination.

Although the court upheld the dismissal of the claims of all but one of the individual plaintiffs (Lambda and the other *amici* organizations took no position on the validity of these individual claims), the court endorsed our argument that a plaintiff need not be currently employed in order to challenge discrimination in benefits that are earned through employment but that, by their very nature, can only be claimed when a worker is no longer employed.

Lambda joined in an *amicus* brief that included the American Foundation for AIDS Research, the ACLU, and several other disabilities and employment rights organizations. Catherine Hanssens assisted on the brief drafted by New York Lawyers for the Public Interest Cooperating Attorney Robert Schonfeld, and NYLPI attorney Ed Copeland.

HEALTH CARE WORKERS

MAURO V. BORGESS MEDICAL CENTER
(Federal Court, Michigan)
LOSS.

In a poorly reasoned decision issued almost one-and-a-half years after oral argument, and almost three years after briefing was completed, the Sixth Circuit Court of Appeals affirmed the dismissal through summary judgment of William Mauro's discrimination case. Mauro was a surgical technician who was moved to a semi-skilled position after rumors surfaced that he had HIV, despite the fact that he rarely, if ever, had his gloved hands near open body cavities during surgery. The district court had granted summary judgment in favor of the hospital. Despite the consensus that the risk of HIV transmission from Mauro to patients was extremely small, the Sixth Circuit endorsed the trial court's conclusion that the presence of any risk, however remote, of Mauro transmitting HIV to surgical patients made him a "direct threat" to these patients and therefore not "otherwise qualified" to perform his duties as required by the ADA. Significantly, the court of appeals also relied on the CDC's guidelines on HIV infected health care workers, which are used to justify the removal of health care providers with HIV who perform "invasive procedures."

In a stinging dissent, one member of the three-judge panel pointed to the majority's failure to apply a key portion of the test that it had enunciated: that in order to find that a risk of harm poses a "direct threat" sufficient to justify a worker's removal, the risk must be numerically significant rather than speculative, and that there was no evidence to support the conclusion that Mauro's work as a surgical technician satisfied that test.

Catherine Hanssens prepared Lambda's *amicus* brief; however, without explanation, the court had denied our motion to participate as *amicus* almost eight months after it was filed along with our brief, and subsequently denied our motion for reconsideration.

INSURANCE

GALANTY V. THE PAUL REVERE LIFE INSURANCE COMPANY

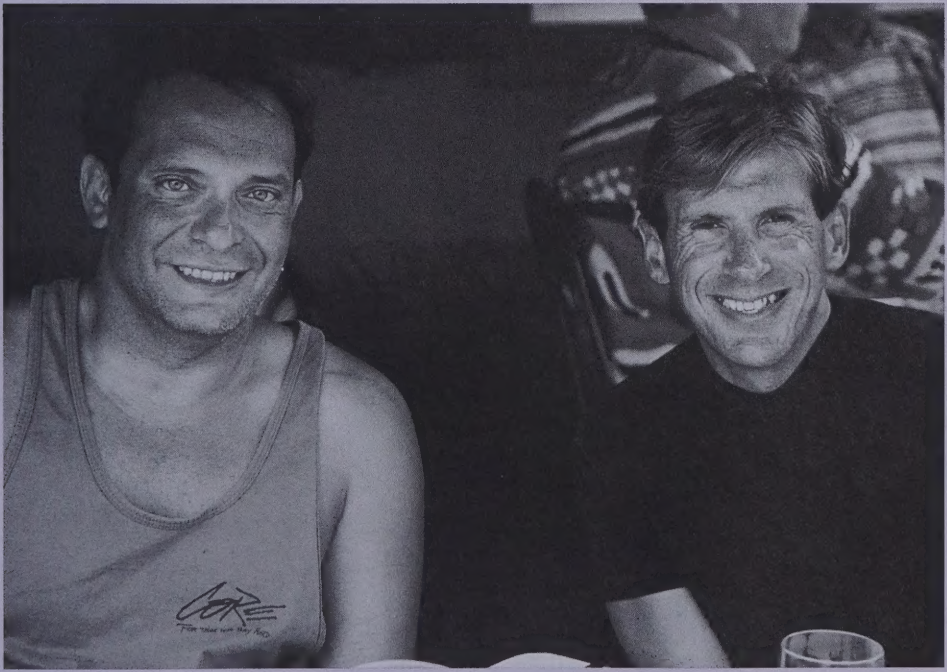
(California)

APPEAL ARGUED.

This case attacks insurance industry practices that seek to deny disability benefits to people with HIV.

Mark Galanty was HIV positive when Paul Revere sold him a disability insurance policy. For the following five years, Galanty had no symptoms of illness, continued to work, and paid premiums under the policy until a problem with his hands caused him to stop working as a court reporter. The policy included an "incontestability" clause (required by law in California) that prohibits insurers from denying claims for disabilities that start more than two years after the policy is issued. To get around that clause, the company claimed that Galanty's disabling condition was present when he bought the policy, because he was HIV positive. But, Galanty's disabling sickness, AIDS, did not manifest itself or cause an inability to work until five years after he bought the policy. Particularly in light of the ever-lengthening period of health and productivity that those with HIV can expect, it is very important to reverse the trend toward "disabling" those with HIV from building future security. The lawsuit includes claims for breach of contract and bad faith insurance practices. In December 1996, Los Angeles Superior Court Judge David Workman, describing this as a question of "first impression" in California, granted Paul Revere's motion for summary judgment, dismissing this case. Our appeal of the dismissal was argued May 27, before the California Court of Appeal. We are awaiting the appellate court's decision.

Jon Davidson represents Galanty along with Cooperating Attorneys Chris Caldwell, Lee Michaelson, and former Lambda Staff Attorney Mary Newcombe, all of the Los Angeles firm of Caldwell, Leslie, Newcombe & Pettit.



Lambda client Mark Galanty(right) whose insurance discrimination case is on appeal, is pictured with his partner Erich Hand.

NEW ENGLAND MUTUAL LIFE INSURANCE CO. V. JOHN DOE

(New York)

VICTORY!

In April, the Appellate Division of the New York Supreme Court affirmed the trial court's conclusion that the incontestability clause in Doe's policy barred New England Life's attempts to avoid liability for Doe's disability claim, and directed the trial court to enter a declaratory judgment holding New England Life responsible for the payment of benefits to Doe.

This case, which parallels the *Galanty* case above, involves interpretation of a common state statutory provision that requires insurance companies' policies to specifically identify conditions they intend to exclude from coverage, and bars denials of coverage even for conditions which existed prior to the policy if the claim for disability is made more than two years after the policy is issued. In a strategy mirrored by other insurers around the country, New England Life attempted an end-run around the law to defend its refusal to pay John Doe's AIDS-related disability claim after collecting premiums from him for five years. New England Life asserted that Doe's disabling AIDS-related condition had "manifested" itself prior to the issuance of the policy because he was HIV positive at that time; it also argued that the policy's exclusion of "conditions which are manifested" before the policy is issued was sufficiently specific to allow the company to refuse to pay benefits to Doe.

New England Life appealed after the Rockland County Supreme Court dismissed its complaint asking that Doe's AIDS-related disability be declared outside the coverage of the policy. Lambda joined the case as *amicus* to defend Doe's position on appeal. Our brief detailed, in part, why it is neither medically nor legally principled to treat HIV infection as a manifestation of AIDS to justify denial of a claim for benefits.

Catherine Hanssens and Cooperating Attorney Barry Burland, an associate with Milbank, Tweed, Hadley and McCloy, wrote Lambda's *amicus* brief on behalf of Doe, who is represented by long-time Lambda Cooperating Attorney Mark Scherzer.

JOHN DOE AND RICHARD SMITH V. MUTUAL OF OMAHA INSURANCE COMPANY

(Federal Court, Illinois)

NEW CASE! PRELIMINARY VICTORY.

This case challenges an insurance company's discriminatory limitation on benefits for care related to HIV infection and AIDS.

John Doe and Richard Smith both have health insurance policies from Mutual of Omaha that severely limit benefits for care relating to their HIV infection to a fraction of the amount provided for other medical conditions. Smith purchased his health insurance policy from Mutual in 1992. The maximum lifetime amount he can receive under his policy is $25,000 and once he's used that, Mutual will pay no more for his HIV-related care. Doe purchased his policy from Mutual last spring, after being informed by his former insurer that it was discontinuing his coverage. Doe's policy limits all care relating to HIV infection to a lifetime maximum of $100,000. In contrast, Mutual provides up to $1 million for other medical conditions, and allows policyholders who reach this limit to get an additional $1 million in coverage if the policyholder goes two years without additional expenses.

Mutual's discriminatory caps affect Smith and Doe's current decisions regarding health care and treatment for their HIV infection and places them at substantial risk of losing their ability to obtain adequate, life-sustaining treatment.

The lawsuit, filed in January in the Northern District of Illinois, alleges that the HIV/AIDS caps violate the Americans with Disabilities Act and Illinois insurance law. Mutual moved to dismiss the complaint, arguing in part that Title III of the ADA does not reach the substance of insurance policies. On April 3, in a nicely-worded decision, the federal district court adopted the reasoning in our brief that those arguments and two recent federal court decisions which had adopted them are inapplicable and unpersuasive, although it did allow dismissal of the less important state law claim. The case now continues toward trial or motions.

Heather Sawyer is working on the case with our co-counsel Ann Fisher, executive director of the AIDS Legal Council of Chicago and Cooperating Attorney Stuart Graff, a partner in the Chicago firm of Schiff Hardin & Waite and member of the AIDS Legal Council's Board of Directors.

CRIMINAL LAW

STATE OF MISSISSIPPI V. MARVIN MCCLENDON

(Mississippi)

PARTIAL VICTORY.

One-and-a-half years after receiving the appellate briefs in this case, the Mississippi Supreme Court finally issued its decision affirming the conviction of the defendant, Marvin McClendon for the October 1994 execution-style murder of two gay men, Robert Walters and Joseph Shoemake.

Upon arrest, McClendon had confessed to the murders, but later claimed at trial that the killings were justified as self-defense because the victims had tried to sexually assault him. The trial court permitted the defense to conduct post-mortem HIV tests on the victims, upon defense counsel's insistence that positive results would be "equivalent to [the victims'] carrying a loaded gun," and then allowed the test results to be introduced as evidence. Unfortunately, the Supreme Court refused to address this latter issue in its decision this May, reasoning that its deciding to affirm McClendon's conviction made it unnecessary to reach whether introduction of the victims' HIV test results was improper.

Lambda had filed a brief in support of the Jones County District Attorney's pre-trial motion to exclude any evidence related to the victims' HIV status or sexual orientation. Although the judge ruled that the HIV status of the victims was relevant, the jury then rejected the justifiable homicide defense and found the defendant guilty on two counts of murder. The defendant had appealed after losing his motion for a new trial. After consultation with Lambda, the Jones County district attorney filed a cross-appeal on the admission of the victims' HIV test results. In late 1996, the state attorney general filed its appellate brief, joined by an *amicus* brief prepared by Catherine Hanssens.

STATE V. JIMMY BIRD

(Ohio)

LOSS.

Refusing to address the medically unsupported claim that spit can transmit HIV, the Ohio Supreme Court affirmed Jimmy Bird's conviction and sentence on May 6, 1998. Bird was convicted of felonious assault in 1994 and sentenced to 3-to-15 years in prison for spitting because he is HIV positive. Bird has served almost three years of this sentence.

During a 1993 arrest for disorderly conduct, Bird allegedly spit on one of the arresting officers. Bird claims that he was maced during the arrest, spit involuntarily to clear the mace from his nose and throat, and did not intend to spit on anyone. However, because Bird is HIV positive, the State of Ohio charged him with felonious assault for spitting during the arrest. Under Ohio law, felonious assault requires that someone knowingly causes or attempts to cause physical harm by means of a "deadly weapon."

The trial court based Bird's conviction and sentence for felonious assault on the prosecution's assertion that the spit of an HIV-positive person is a "deadly weapon." Bird appealed, arguing that the trial court's acceptance of his plea was improper due to the State's failure to allege any facts establishing that Bird's spit could be a "deadly weapon." Bird lost in the appellate court but petitioned Ohio's Supreme Court to hear his appeal, which was granted in May 1997. In support of this petition, and in our subsequent brief to the supreme court on Bird's appeal, Lambda focused on the state of medical knowledge regarding the risk of HIV transmission through spitting (i.e., characterized as no quantifiable risk), and argued that a conviction such as Bird's cannot stand when the prosecution has failed to allege sufficient facts (in this case, actions that pose *any* threat of physical harm) to establish the essential elements of the charged crime.

Only one judge addressed the HIV issues raised in the case. In his dissent, Judge Paul Pfeifer firmly rejected the notion that the spit of a person with HIV poses any danger to others. Comparing Bird's spitting to assault with "a powder puff, a water balloon, or a jelly doughnut," Pfeifer wrote that "the fact that the indictment calls something a deadly weapon does not make it so." That determination rests with the trial court who abused its discretion in convicting Jimmy Bird. The majority opinion refused to reach these issues, holding that Bird's plea of "no contest" to the indictment made it "unnecessary to decide whether saliva may be considered a deadly weapon." The court also rejected Bird's ineffective assistance of counsel claim, characterizing Bird's original counsel's advice that he plead "no contest" as "the best trial tactic in the case."

The case was argued by Bird's counsel, Franklin County Public Defender David Strait, and by Heather Sawyer as *amicus curiae*, who also prepared Lambda's briefs in this case.

PFLAG
Paren
and Friends of Lesbi

Photo courtesy of PFLAG.

Evan Wolfson and David Buckel accept PFLAG's Flagbearer award from Board Member Jerome Culp. Lambda received the award for its efforts in the area of social justice, support, and advocacy work, at PFLAG's national conference in Orlando, Florida.

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* *These materials are also available on Lambda's Web site: http://www.lambdalegal.org*

Other Resources

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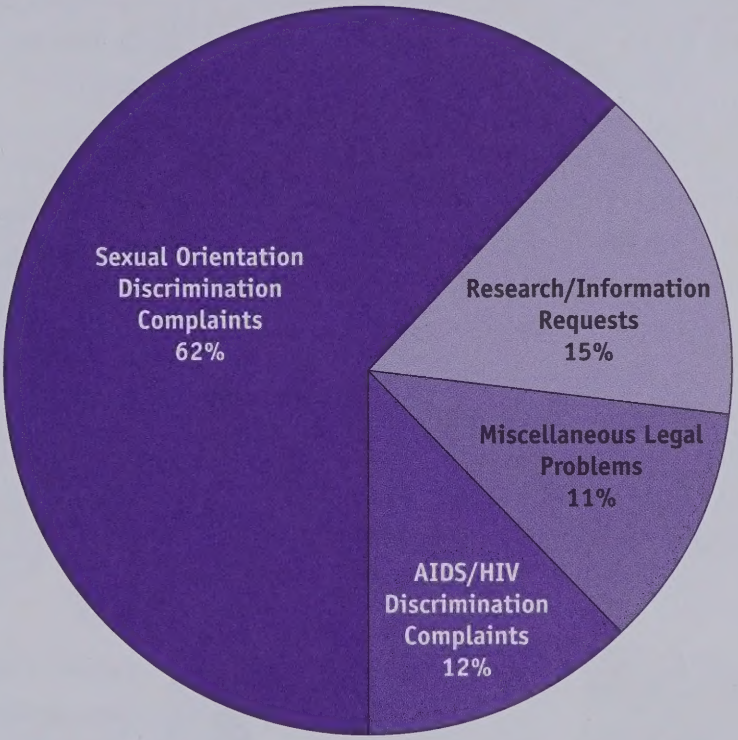
Who Is Calling Lambda?

by Gillian Chi

As Lambda's caseload grows each year, so does the volume of requests for assistance we receive through our intake. In fact, the total number of callers seeking Lambda's help rose to 2,646 in 1997, a 13 percent increase from the 1996 total of 2,336. Needing legal information or assistance with sexual orientation-related and HIV/AIDS-related discrimination, people contact the Lambda office in their regions during designated Intake Hours. For the majority of callers, whose cases do not present impact litigation issues, Lambda provides leads to other organizations, practical information that might help them address their problems, and an invitation to have a private attorney, should they retain one, make use of any relevant resources or legal work Lambda has. However, in those instances where a case presents legal issues in line with Lambda's mission to change existing law or set precedents, and if our current resources allow (i.e., is there an attorney who is able to take and litigate another case at that moment), Lambda may take on legal representation.

Analyzing these calls helps us to identify not only the issues currently faced by our community, but also *where* in the country Lambda's advocacy is most needed. State-by-state intake data of years past has consistently demonstrated a disturbingly high incidence of sexual-orientation discrimination in the Southeast, where not a single state has discrimination protections for gay people. Upon opening this summer, our Southern Regional Office was quickly inundated with intake calls from the nine states in the region (see also p. 16). After only a few months of operation, the SRO was already responding to 19% of all calls to Lambda nationally, comparable to the 21% handled annually by the well-established Midwest and Western Regional Offices.

While it is gratifying finally to be able to provide a local response and assistance to our community in the South, the high volume of calls — in the South as well as across the country — is a sobering reminder of how far we still have to go in eradicating discrimination against lesbians, gay men and people with HIV/AIDS.



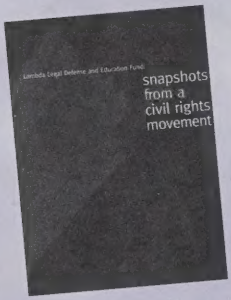
Reasons for Calling	**NHQ**	**MRO**	**WRO**	**SRO**	**LLDEF Total**
AIDS/HIV Discrimination Complaints	164	69	48	30	**311**
Sexual Orientation Discrimination Complaints	844	344	318	141	**1647**
Research/Information Request	217	81	75	16	**389**
Miscellaneous Legal Problem	123	62	104	10	**299**
Total Calls Received Per Office	**1348**	**556**	**545**	**197**	**2646**

Lambda
Legal Defense and Education Fund, Inc.

25 th anniversary
1973 - 1998

1998 marks the 25th anniversary of Lambda's efforts to achieve equality under law for lesbians, gay men, and people with HIV/AIDS. Lambda's legal victories and educational efforts empower all members of our community to assert their rights and help to shape a society that is safe and just.

During the past 25 years, Lambda has achieved a solid record of success, winning important victories on behalf of lesbian and gay youth, couples, parents, workers, members of the military, people with HIV/AIDS, and many more.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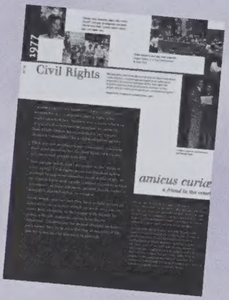

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Please join today in support of Lambda's work to secure equal justice for all.

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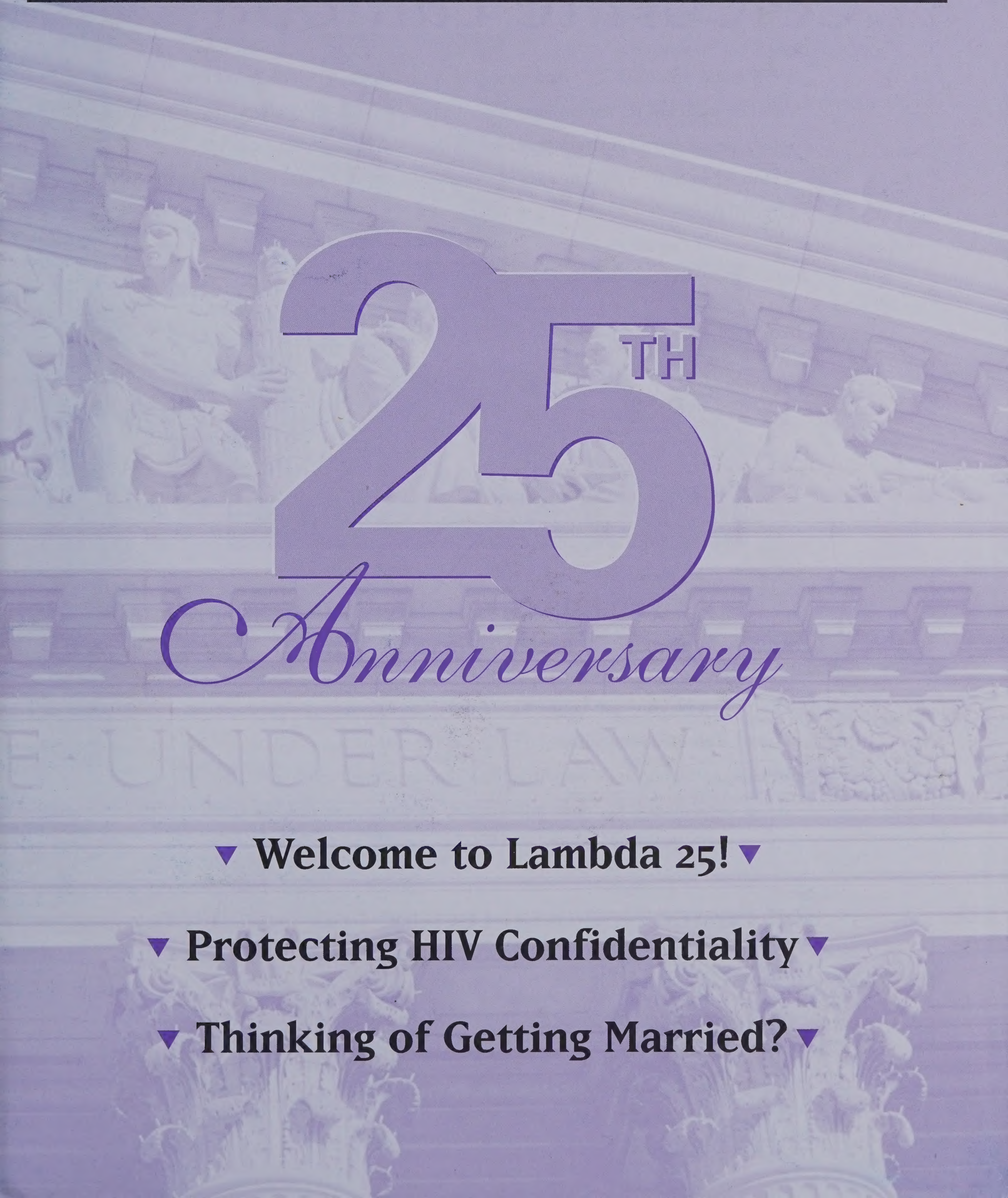
THE LAMBDA UPDATE

THE NEWSLETTER OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND WINTER 1998



25TH
Anniversary
E UNDER LAW

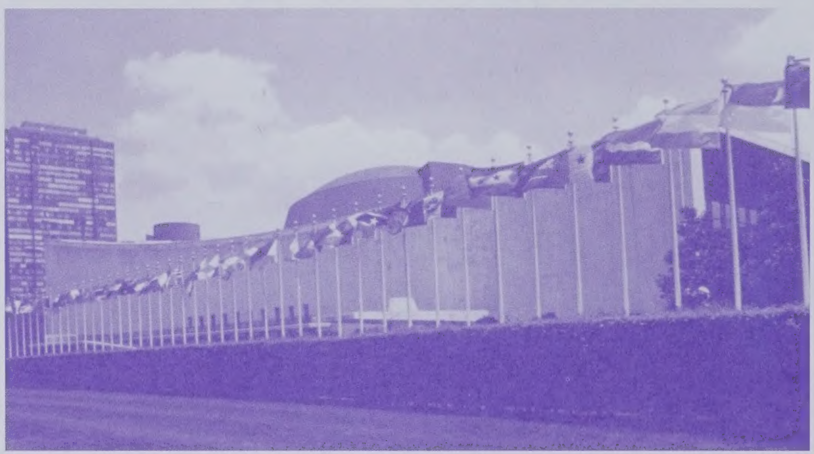
▼ Welcome to Lambda 25! ▼

▼ Protecting HIV Confidentiality ▼

▼ Thinking of Getting Married? ▼

Celebrate Lambda 25

1998 marks Lambda's 25TH Anniversary as it continues its efforts to achieve equality under law for lesbians, gay men, and people with HIV/AIDS. As we reflect on the extraordinary progress we have made during the last quarter of a century, we also renew Lambda's commitment to securing and maintaining our civil rights.



Lambda 25 Celebration

New York City

The United Nations will be the site of our 25th Anniversary celebration on May 4. This event also will make history as the first national lesbian and gay gathering at this important world landmark. Lambda's event this year will include dinner and dancing. For more information, call Lambda at 212-809-8585.

Bon Foster Memorial Lecture and Luncheon

Chicago

Coretta Scott King will deliver the Bon Foster civil rights address at Lambda's 25th Anniversary luncheon in Chicago on March 31. For more information contact Lambda at 312-663-4413 ex. 29.

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The Newsletter of Lambda Legal Defense and Education Fund

Volume 15 Number 1

Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men and people with HIV/AIDS, through impact litigation, education and public policy work. Founded in 1973, Lambda is not-for-profit and tax-exempt.

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Lambda Update Editor: Deirdre M. Reznik
Design: FADesign, Inc., NYC
Printing: Darbert Press, NYC
ISSN: 1058-949X
Printed on recycled paper

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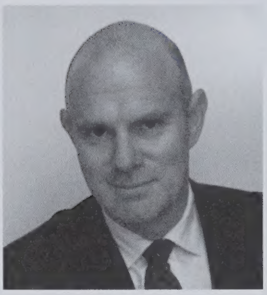

Kevin M. Cathcart

In 1973, after a small group of people met in an apartment in New York City and decided that they needed to create a legal defense organization for the lesbian and gay community, Lambda was born. This humble beginning, as a small, all-volunteer organization, included an initial lawsuit, in which we had to sue the state of New York for Lambda to incorporate. A long list of key civil-rights cases followed. As we celebrate our 25th anniversary nationwide in 1998, we are proud that Lambda has become one of our community's key institutions, and I want to thank everyone — the volunteers, plaintiffs, staff members, and donors who have made this work possible.

Lambda's creation was part of the process by which the lesbian and gay community began to transform itself, demanding recognition and respect, and doing the long, hard work of educating people, inside and outside of our community, about our legal status and the changes needed if we were to achieve justice. Over the past 25 years, Lambda's lawyers have worked in courtrooms in every state in the country, fighting to protect lesbian and gay parents and families, working to stop anti-gay initiatives, continuing to challenge anti-gay military policies; there is no area of lesbian and gay life that has not been affected by Lambda's work.

Over the past 25 years, Lambda's lawyers have worked in courtrooms in every state in the country... every area of lesbian and gay life has been affected by Lambda's work.

Throughout this past quarter century, Lambda steadily grew, moving first from an all-volunteer group to one with staff and our own office, starting with a very tiny one in the old ACLU building in Times Square. Steadily adding legal staff in New York, Lambda then began a strategic process of becoming an ever-more national organization. In the mid-80's Lambda added our AIDS Project, which has played a critical role in shaping legal issues in the on-going epidemic. In 1990, we opened our first regional office, the Western Regional Office in Los Angeles, which now has three lawyers on its seven-member staff. Since then our growth has been fast-paced, with the Midwest Regional Office opening in 1993 and the Southern Regional Office in 1997.

Lambda now has 14 attorneys working full time on our civil rights issues, plus paralegals and law student interns, and cooperating attorneys across the country. We provide leadership on lesbian, gay, and HIV-related legal issues, publish educational materials for lawyers and the general public, and serve as a clearinghouse and resource on civil rights information.

With state and local ordinances, constitutional interpretations, and an ever-growing body of civil rights case law, lesbians and gay men today have protections that were unimaginable in 1973. Yet, as Lambda's legal director, Beatrice Dohrn, makes clear in her column, we have a lot of work ahead of us. There are many battles that Lambda still must fight.

Thank you for the support that has brought us to this important anniversary, that has helped us become the community institution that Lambda is today. With your help, we will do even more in the coming years, helping to ensure justice across the land. ▼

Raising the Stakes

by Beatrice Dohrn

Michael Wakefield

Beatrice Dohrn

Should marriage be available only to different-sex couples? May a lesbian be fired by a state attorney general for having a private, religious wedding ceremony? Should people with asymptomatic HIV be excluded from the protections of the Americans with Disabilities Act? Should the military subject lesbians and gay men to punitive rules merely to assuage some people's unfounded fears? Does the federal law's prohibition on sexual harassment apply regardless of the sex and sexual orientation of the harasser or the person harassed? Should local governments be allowed to enact the same kind of anti-gay law that the United States Supreme Court struck down on the state level? And what about laws against anal and oral sex between consenting adults — should be they be grounds for removing custody of children from lesbian and gay parents?

These are only some of the important questions Lambda currently has before high-level courts — including three at the U.S. Supreme Court and others in federal appeals or state supreme courts — that will affect the lives of lesbians, gay men, and those with HIV for years to come.

That's remarkable in itself when you consider that not many years ago, we did most of our battling to be in court *at all.* Cases that asserted rights on behalf of gay people or those with HIV/AIDS were met with motions to dismiss — and in many cases we actually *were* thrown out of court. Now, the main focus of our litigation is well beyond surviving our opponents' effort to bar the courtroom door to us; Lambda's work has evolved. In each of our cases, we now aim to devise strategies that can work like building blocks for the future advancement of the law.

In Lambda's early work, a court's analysis — even whether the case was won or lost — was often not the most far-reaching aspect of those early efforts. The simple fact that a gay person refused to accept injustice as her or his due was often transformative. We could count it as a victory if an attorney could be found to assist someone who was willing to stand up in court and fight.

Today's battle lines are sharper and the potential legal impact of each case more sweeping. For example, it's indicative of the high stakes today that we frequently are opposed by a well-funded radical right, or by a government entity, or sometimes both! Gone are the days when the main qualification for this work was a willingness to stand up in court and denounce injustice based on sexual orientation.

The cases on our docket now require expertise in sexual orientation law — *a body of law that does now exist.* Lambda's staff is uniquely positioned to provide that perspective. We still are fortunate to work with many dedicated volunteer attorneys. But each case you see on Lambda's docket (and quite a few that are not a part of our formal docket) involves a serious commitment by a Lambda attorney from one of our four offices around the country, because the expertise they are able to provide is critical to the success of our movement for equality through the courts. You can rely on Lambda to think carefully about which issues to put forward, and to take our very best shot on the ones that we think can be won.

We now aim to devise strategies that can work like building blocks for the future advancement of the law.

As Lambda moves into its 25th anniversary year, our entire community can celebrate the unprecedented moment we are experiencing. Just as our legal challenges are reaching higher courts and being taken more seriously, public awareness of lesbians and gay men and the unjust discrimination we face is reaching an all-time high. As always when there's much to win, the risks are high. We are working very hard in the courts and in our education work to take full advantage of the opportunities that we, as a community, have earned. ▼

Inventing *"AIDS Exceptionalism"*

by Catherine Hanssens, AIDS Project Director

Michael Wakefield

Catherine Hanssens

Today's public health fundamentalists charge that "AIDS exceptionalism" coddles people with HIV while threatening overall public health. These critics insist that sound public health policy dictates using mandatory testing and names reporting to stem the spread of HIV, which they claim curbed syphilis decades ago.

But "AIDS exceptionalism," as they perceive it, is a fiction. To begin with, the suggested measures actually were used rarely against syphilis (doctors frequently neglected to report the names of those in their care with sexually transmitted diseases). Notably, the public health fundamentalists who want mandatory HIV testing and names reporting are not proposing a package deal that includes the entire range of "traditional" interventions. For example, syphilis was *treated*, rendered noninfectious and generally cured. There certainly is no offer, after identifying those affected by HIV, to provide them with unqualified access to treatment (to the extent effective treatment exists) — nor is there any *real* guarantee that people identified with HIV could not legally be forced out of jobs and services.

There is no real guarantee that people identified with HIV could not legally be forced out of jobs and services.

The federal Centers for Disease Control and Prevention has indicated that it intends to recommend names reporting of HIV infection in an attempt to get a more accurate picture of the status of the epidemic, and to better target prevention efforts. The danger of this proposal is exposed by the current obsession with "exceptionalism" and a new wave of HIV backlash. Remember last fall's hysteria fed by media accounts of Nushawn Williams, the troubled 20 year old accused of infecting a number of young women in upstate New York's Chautauqua County? That case reveals that many politicians (and talk show hosts) envision names reporting as a tool for a radical twist on "tradition": use of names reporting to publicize, even arrest, those with HIV as part of an ill-conceived strategy that is more retribution than prevention.

AIDS *has* been exceptional in a number of ways. Other victims of plagues past certainly experienced political indifference and discrimination, but AIDS is the first disease to have 27 laws criminalizing it, making acts from spitting to sex a felony in various states for someone who has tested positive for HIV. Criminal sanctions apply only after a person chooses to get tested, so, ironically, the best way to avoid liability is to avoid knowing anything about your HIV status, regardless of how you behave. AIDS, also, *to this day*, is the only disease, other than mental health illness, routinely targeted by insurance companies for limits on benefits not applied to any other catastrophic illness.

The latest cry of "exceptionalism" attacks health care and services provided by AIDS service organizations. Ignoring the huge numbers of volunteers who make many services for people with HIV possible, this focus obscures the true problem: the need for reform of health care financing, so that everyone with a serious, chronic illness has access to decent medical care and services.

One of the positive "exceptional" things about AIDS is the extent to which a community came together to address the disaster of health care and indifference for people with HIV, to advocate for needed resources, and to pull together a huge network of volunteers and services to care for the sick and their loved ones. This is not a scandal; it is an achievement and a model for other disabilities groups who, for better or for worse, also continue to advocate narrowly for the discrete members of their groups. Segregated services for people with HIV are a mixed blessing — they fill a vacuum, but reflect the nature of funding streams as much as programmatic philosophy.

"AIDS exceptionalism" mislabels complex, national problems. We can harp on this fashionable figment and villainize the sick, or we can do the real work of addressing the need for HIV prevention education and for health care financing reform. ▼

Shahar Case Appealed to the High Court

by Ruth E. Harlow, Managing Attorney

At press time, we are expecting to hear shortly whether the United States Supreme Court will review Robin Shahar's case against former Georgia Attorney General Michael Bowers. Bowers fired Shahar from a staff attorney position in his office after finding out she and her partner planned to celebrate a religious wedding ceremony. In a petition for writ of *certiorari* written by Lambda, with help from our co-counsel the ACLU, Shahar urged the Court to rule on her case because the federal appeals court decision below, in favor of Bowers, sharply departs from numerous Supreme Court precedents and eviscerates first amendment protections, especially within the context of public employment. Last May's decision by the U.S. Court of Appeals for the Eleventh Circuit harms not only Shahar, but many others in that region, now bound by the weakened constitutional rights of that ruling.

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Poyo-Hinton Photo

Managing Attorney Ruth Harlow with Robin Shahar and her partner Fran Shahar announcing the petition for Supreme Court review.

If the Supreme Court grants review, this case will be the Court's first opportunity to consider whether gay couples' committed personal relationships are entitled to the same, strong constitutional protection as other deep or familial relationships under the first amendment right of intimate association. A central theme of Shahar's case is that our lesbian and gay relationships should be accorded the same respect and protection as committed heterosexual relationships. Certainly no one, including a lesbian, should be fired from government employment simply because she celebrates and values a loving relationship in her private life, yet that is what the court of appeals endorsed.

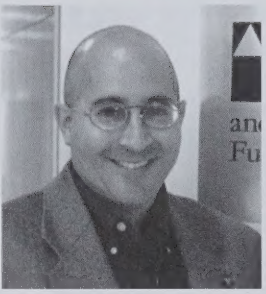
Another central theme of Shahar's case and her petition for *cert.* emphasizes that Bowers judged Shahar, as a lesbian, by all kinds of discriminatory double standards. Each of those double standards stemmed from dislike of, discomfort with, or stereotypes about lesbians and gay men. Such "standards" constitute illegitimate government interests and are entitled to no weight in assessing whether Bowers' employment action was constitutionally justified. In upholding Shahar's firing, the Eleventh Circuit brushed aside the clear equal protection problems with Bowers' reasoning and virtually ignored *Romer v. Evans,* the Supreme Court's 1996 opinion that struck down Colorado's anti-gay Amendment 2.

To any lesbian or gay man, the weightiness of Shahar's fight — for freedom from government action that punishes one's most important personal relationship and for employment standards that judge everyone's work by the same rules — is obvious. We will learn in early 1998 whether at least four Supreme Court justices, the number of votes necessary to trigger review, likewise appreciate the weightiness of her case. ▼

Late-breaking News — On January 12, the U.S. Supreme Court declined to review Robin Shahar's constitutional challenge to her firing by former Georgia Attorney General (and now Georgia gubernatorial candidate) Michael Bowers. This development brings a frustrating and disappointing end to six years of litigation on Shahar's behalf. As is usually the case in such actions, the Court did not provide any insight as to why it turned down the petition for review. The Court may want to see more litigation in the lower federal courts on gay employees' rights, including issues about their openness at work and the double standards under which they are often judged, before itself addressing such important questions. Though this is the end of the line for Shahar's individual case, Lambda will keep pushing for full equality in the workplace and for gay peoples' full protection by the Bill of Rights, the central themes in *Shahar v. Bowers.* -R.E.H.

So You're Thinking of Getting Married...

by Evan Wolfson, Marriage Project Director



Michael Wakefield

Evan Wolfson

Anticipating the decision in our historic Hawaii marriage case, we are thinking about what will follow our hoped-for breakthrough. Of course, there is much each of us must do *now* to help secure lesbian and gay couples' freedom to marry nationwide. But when the time comes — whether very soon or further in the future — couples need to be able to make an *informed* choice about whether to get married, understanding what it could mean in their lives.

Lambda is preparing couples (and lawyers) to think about the social, legal, and economic protections, benefits, and responsibilities civil marriage will bring... as well as the uncertainty, exposure, and discrimination many, finally, lawfully married couples will face as we move into the next chapters of this struggle.

Deciding Whether to Get Married

While the choice about getting married is a serious one for each individual and couple, gay or non-gay, it is a particularly political decision for lesbian and gay couples as we continue to fight for full equality. Same-sex couples, at least for a while, will not be able to take for granted much of what comes automatically to different-sex couples who marry. They will be confronting both opportunities and discrimination that will affect their lives and legal and economic concerns. This will be true in areas such as immigration, parenting/custody, taxation, divorce, access to health care, government assistance, estate-planning, and so on.

Remember, if we win in Hawaii, and you go there to get married, you really will be married. It is not just a matter of going home and *acting* as if you are married. You don't get to pick and choose when you are married, nor for which purposes you are married, nor can you just deny your marriage if the government, your employer, or someone else wants to enforce your marriage in a way that "costs" you something. At the same time, depending on where you live, you may not be able to claim right away many of the benefits of marriage. This is because it will take some time (and careful, well-chosen litigation) before we fully overthrow the discriminatory, anti-marriage laws that many states and the federal government have adopted to attempt to make our marriages second-class.

Deciding Whether to Litigate

For each couple's good, as well as for our common goal of ending sex discrimination in marriage, every married couple must understand that *just because you have experienced discrimination does not mean that you should litigate.* Not every couple will be equally well-placed to bring a case that will, after all, affect not just them, but all of us. You can't always pick your battles, but you *can* pick and choose which battles to fight, especially in the courts. Getting married in this discriminatory environment means that you all the more have responsibilities to respect how your choices affect the entire lesbian and gay community.

My co-counsel, Dan Foley, reminds us that when courts address new legal circumstances, they are often heavily influenced by the first few cases that frame the issues and shape the evolution of the law. Thus, there is a real advantage and importance in early wins. The wrong argument, wrong case, wrong court, wrong state, wrong time could set us all back. By contrast, each state we persuade to treat our lawful marriages equally adds to the likelihood of ultimate success nationwide ... as does each passing month of growing cultural acceptance by more and more non-gay people. We must work together to make this happen.

Deciding to Get Involved

Naturally, as the Marriage Resolution box on the next page shows, there are vital ways to make a contribution without litigating. Same-sex married couples, like other lesbians and gay men, can make a compelling statement about our lives by being open about who we are and engaging non-gay people, person to person, week by week in dialogue about ending the discrimination we face.

The key to ultimate success in winning the freedom-to-marry is raising the consciousness of fair-minded non-gay people. Once we give non-gay people a chance to see married same-sex couples (no longer a hypothetical but real-life), they will see that the sky didn't fall, and that anti-marriage attacks on our families are un-American and wrong. ▼

THE MARRIAGE RESOLUTION

Because marriage is a basic human right and an individual personal choice, RESOLVED, the State should not interfere with same-gender couples who choose to marry and share fully and equally in the rights, responsibilities, and commitment of civil marriage.

The individuals and organizations listed below are just a sampling of the more than 1,000 endorsements Lambda has received for The Marriage Resolution.

Coretta Scott King
Honorable John C. Lewis

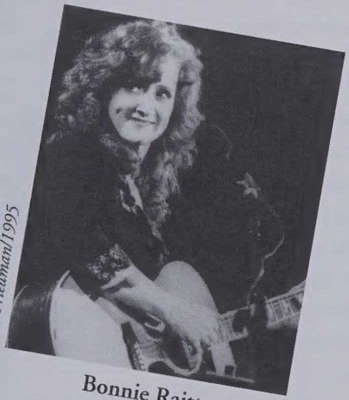
Gillian Anderson
Ted Danson & Mary Steenburgen
David Duchovny
Melissa Etheridge & Julie Cypher
Whoopi Goldberg
Helen Hunt
Werner Klemperer
Lucy Lawless
Norman Lear
Luscious Jackson
Paul Reiser
Chita Rivera
Gloria Steinem
Marlo Thomas & Phil Donahue

American Friends Service Committee (Quakers)
California Council of Churches
Central Conference of American Rabbis
Union of American Hebrew Congregations
Unitarian Universalist Association

American Civil Liberties Union
American Family Therapy Academy
American Latin Alliance
American Psychoanalytic Association
Atlantic Records
Japanese-American Citizens League
National Association of Social Workers
National Organization for Women
People for the American Way
United States Student Association

Michael Greco

Lucy Lawless, as Xena, Warrior Princess


Ken Friedman/1995

Bonnie Raitt

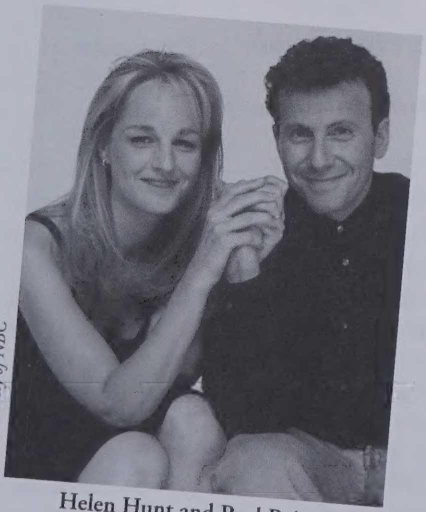
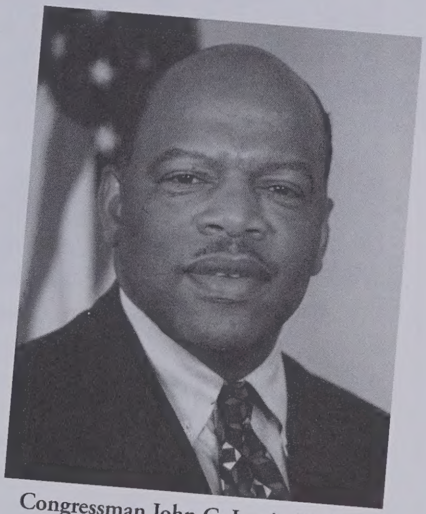


Photo courtesy of NBC

Helen Hunt and Paul Reiser of TV's Mad About You


Congressman John C. Lewis (D-GA)

Alex Berliner

Julie Cypher and Melissa Etheridge

Lambda to Cincinnati: *Can You Say Romer?*

by Patricia M. Logue, MRO Managing Attorney, and Suzanne B. Goldberg, Staff Attorney

DM Reznik

Patricia Logue and Suzanne Goldberg

When the United States Supreme Court struck down Colorado's anti-gay Amendment 2 in 1996 in *Romer v. Evans,* it could not have been more firm — "a law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." Underscoring its point, the Court also set aside a venomous 1995 decision upholding Cincinnati's Issue 3, a virtual clone of Amendment 2. The Court sent the Issue 3 case — on which Lambda has labored since 1993 — back to the U.S. Court of Appeals for the Sixth Circuit to be reconsidered.

But was it reconsidered? Last October, the same three-judge panel ruled, incredibly, that *Romer* "has no pertinence" to Issue 3 and that this mirror-image of Amendment 2 should again be upheld. This misguided ruling in *Equality Foundation of Greater Cincinnati v. City of Cincinnati* threatens to reopen a sad chapter in American history. Indeed, within weeks, an anti-gay group in Ypsilanti, Michigan, announced plans to circulate a ballot measure identical to Issue 3. Is it *deja vu* all over again? Not if Lambda can help it.

Lambda and our co-counsel promptly filed a petition asking the entire Sixth Circuit to rehear the case and set aside the panel's shocking ruling. It's shocking because the Cincinnati and Colorado amendments have the same language and effect. Both would ban government from prohibiting discrimination against lesbian, gay, and bisexual constituents, while allowing all others to seek protection, and both obviously make it "more difficult" for gay people "to seek aid from the government." Giving a questionable spin to the *Romer* holding, however, the panel concluded that the Supreme Court intended to bar only state governments from discriminating in this fashion, not local governments.

The vision of some courts gets cloudy when the issue presented concerns lesbian and gay equality.

Our petition for rehearing reminds the full court that the Constitution does not exempt cities like Cincinnati from the obligation to treat their constituents equally. To the contrary, the *Romer* Court declared that "government and each of its parts [must] remain open on impartial terms to all who seek its assistance." Furthermore, we pointed out that the Supreme Court had firmly rejected the tired myth that civil rights laws grant only "special rights" — yet, tellingly, the panel invoked our opponents' "special rights" rhetoric over and over. The court's attempt to minimize the harm of Issue 3 flies in the face of the Supreme Court's analysis.

The panel's ruling is a striking reminder that even as we make significant advances toward securing the rights of gay people, the vision of some courts gets cloudy when the issue presented concerns lesbian and gay equality. As Lambda continues working to bury Issue 3 in the trash heap of failed anti-gay ballot initiatives, the panel's ruling reminds us, again, that the battle is not over. Only with constant vigilance can we safeguard our hard-won civil rights. ▼

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Lambda Joins Domestic-partner Battle for Friendly Skies over San Francisco

by Jennifer C. Pizer, WRO Managing Attorney

United States Judge Claudia Wilken cut quickly to the core of San Francisco's domestic partner ordinance at an October hearing about whether the city has the power to refuse city contracts to companies that discriminate — in salary or family benefits — against unmarried employees anywhere in the country. This nationally watched case could clear the way for many other cities to take similar steps to secure domestic partner benefits for employees of their contractors. Currently, at least three dozen cities and at least five states offer their own workers such benefits, and this case could unleash a trend that further expands this increasingly popular means of improving treatment for lesbian and gay employees.

Lambda is participating in the defense of San Francisco's ordinance, which has been challenged by passenger airlines and freight carriers that seek leases for valuable, city-owned property at San Francisco International Airport. (The ordinance does not affect landing rights, which are controlled by federal law.) With public backlash likely against companies that attack the ordinance directly, the air carriers have sued via their trade group, the Air Transport Association (ATA).

At the heart of the lawsuit being heard in Oakland, California, are complex federal laws, including the Airline Deregulation Act, the Railway Labor Act, and one known as ERISA, which governs employee welfare benefit and pension plans. Judge Wilken has focused on threshold questions of "standing" and "ripeness" — that is, who gets to be in court arguing for whom and about what. Depending on how they are answered in this case, those questions threaten to highlight the only two member air carriers with city contracts now up for renewal: United and Federal Express. If she dismissed ATA for lack of standing, the judge asked its attorney at last fall's hearing, would the two companies like to enter the case individually? At stake for the air carriers are multi-million-dollar leases for use of city property.

Public officials and activists across the country also eagerly await Judge Wilken's ruling, knowing its potential to spur or stall the efforts underway in numerous other cities to enact similar laws. That ruling, and the air carriers' decisions, were pending at press time.

Still threatening is a separate suit brought by Pat Robertson's American Center for Law and Justice (ACLJ) for an engineering firm that wants city contracts but refuses to provide equal benefits. The ACLJ started by filing a motion that attacked not just the contracting law but also the city's long-standing practice of offering such benefits to its *own* employees. The air carriers pressed the ACLJ into withdrawing those arguments at least temporarily, to avoid having them heard with the airlines' case, but the ACLJ is expected to reassert them at any time. ▼

Rocky Lewis

Jennifer C. Pizer

BALIF Legal Services Award

On February 5th, Lambda will receive the Legal Services Award from Bay Area Lawyers for Individual Freedom (BALIF). The award will recognize Lambda for its 25 years of service to the lesbian and gay community. Jennifer Pizer and Board Co-chair Gale Richards will be accepting the award on Lambda's behalf.

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Western Celebrations For Lambda 25

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August 22

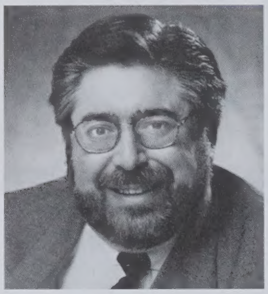
Seattle Reception
August 6

Los Angeles Reception
October 15

For more information about these events, call the Western Regional Office, 213-937-2728.

For HIV-Related Discrimination, Combination Legal Approach Proving Best

by Jon W. Davidson, WRO Supervising Attorney



Rocky Lewis

Jon W. Davidson

In the almost 15 years since Lambda brought the first AIDS discrimination case in the country, the nature of the epidemic, and the public's response, have gone through many changes. Since Lambda's first case, we have won many victories in the courts and obtained laws prohibiting employment discrimination based on AIDS. As a result, much of the discrimination faced by people with HIV has become more subtle and harder-to-prove; some jurists on our conservative federal bench also have placed in doubt whether asymptomatic HIV is a protected disability under these laws (an issue the United States Supreme Court will address this spring). Meanwhile, many who are HIV positive are living longer, are able to work for more extended periods of time or are returning to work after time on disability leave. Due to these changes, we have had to develop new approaches to fight HIV-related employment discrimination.

Lambda still actively pursues litigation on cutting-edge issues, like the *Bell v. Wells Fargo* case in San Francisco, in which we filed an *amicus* brief to explain how obtaining disability benefits is not inconsistent with pursuing a claim for employment discrimination. But we also have had to figure out ways to leverage our expertise to help the large numbers of people still experiencing garden-variety employment discrimination because of their HIV status. In the Western Region, as throughout the country, we have accomplished this through providing trainings at legal conferences and to staff and volunteer lawyers at AIDS legal services groups. We also regularly consult with and assist lawyers throughout the region who seek our advice on HIV issues.

For example, we recently were able to help L.A.'s HIV & AIDS Legal Services Alliance — which Lambda helped form — convince the city's Police Commission to end its decade- old requirement that individuals applying for a license as a massage therapist disclose HIV test results to the Commission (a practice that violated both state law and the Americans with Disabilities Act). We also are working with that legal alliance to develop a preventive approach to helping people with HIV head off employment-related and other legal problems. We hope this method can be adopted in communities across the country.

> ***We regularly consult with and assist lawyers throughout the region who seek our advice on HIV issues.***

Through efforts like these, Lambda has been able to multiply many times over the legal resources available to people living with HIV and AIDS. On the legal as on the medical front, a combination approach seems to work best for dealing with HIV. ▼

Defense
Educatio
, Inc.

Robert Hale

Los Angeles Mayor Richard Riordan presented the Liberty Award to Judge William A. Norris.

Fifth Annual West Coast Liberty Awards

Lambda's awards ceremony made headlines because of stern words aimed at President Bill Clinton by a prominent honoree, **Judge William A. Norris** of the United States Court of Appeals for the Ninth Circuit. Judge Norris called on the President to renounce the military's anti-gay policy because it is "evil and wrong."

The prescience and power of Judge Norris' speech, which caught the attention of local and national media, were among many highlights of a memorable awards ceremony. With eloquent and touching words, actor/activist **Judith Light** accepted a Liberty Award, as did **Dr. Sylvia Rhue, Frances Reid** and **Dr. Dee Mosbacher**, directors and producers of the award-winning documentary, *All God's Children*. The award was presented by California State Assembly Speaker Pro Tempore **Sheila Kuehl**.

Remarks by Los Angeles **Mayor Richard Riordan** and comic banter from the evening's master of ceremonies, **Bruce Vilanch**, added more highlights to Lambda's leading West Coast event last October 16. Some 350 celebrants enjoyed the reception, held at the Center Green Theatre of the Pacific Design Center. ▼

Asian-Pacific Islander and Gay Links in the Struggle for Civil Rights

by Myron Dean Quon, Staff Attorney

Myron Dean Quon
Margaret Chon
Deena

Karin Wang

Myron Quon at the Civil Rights Roundtable for the Ninth Annual National Asian Pacific American Bar Association Conference in San Francisco.

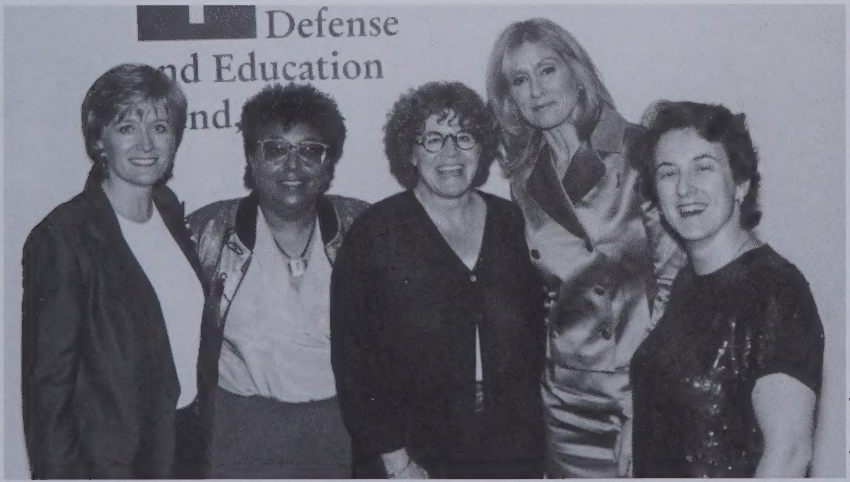
The fight for civil rights demands both coalition building and an understanding of how the oppression of any group oppresses everyone. The National Asian Pacific American Bar Association (NAPABA) highlighted this connection by sponsoring a panel, at its Ninth Annual Conference in San Francisco in November, that examined the relationship between the struggles against discrimination by Asian Pacific Islanders (API) and by lesbians and gay men.

As the NAPABA conference panel noted, API communities like all others, include lesbians and gay men. Prejudice may keep many lesbian and gay relatives invisible at API family gatherings, and the parents of many API men who have died of AIDS continue to say, out of shame, that "he died of cancer." But, increasingly lesbian and gay issues are becoming visible within API organizations. For example, the Japanese American Citizens League and the Asian American Legal Defense and Education Fund are lending support to the battle for full marriage rights for same-sex couples. NAPABA is the most recent major API organization to acknowledge the API-gay link. (The resolution endorsing the freedom to marry for same-sex couples is now before NAPABA's affiliates and its Board of Governors.)

That link includes a shared history of marriage-law discrimination. At one time, 15 states had laws specifically prohibiting civil marriages between people of API descent and whites. The arguments used then to prohibit such interracial marriages were similar to today's arguments against legal recognition of marriages for same-sex couples. The equal protection arguments that overturned anti-miscegenation statutes should apply the same way, and requires an end to prohibitions against marriage for lesbian and gay couples.

The statewide ballot that attempted to restrict the rights of its lesbian, gay, and bisexual citizens, and was overturned in *Romer v. Evans*, is another example of how similar tactics are used against many of our communities. Like the proponents of Colorado's Amendment 2, extremist organizations seeking to limit the rights of minority groups placed Proposition 187 (restricting immigrants' access to basic human services) and Proposition 209 (eviscerating affirmative action programs) on the California ballot and are attempting to place an anti-marriage initiative and an anti-bilingual education initiative on the state's ballot in 1998. Statewide anti-affirmative action initiatives similar to Proposition 209 also are being proposed in Oregon and Washington. This tactic of using majority power and status to gut the civil rights of different minority groups endangers everyone.

These latest attacks on civil rights illustrate the importance of coalition building and the necessity of the gay and API communities' understanding our common concerns and supporting each other in fighting discrimination. ▼



Robert Hale

Board co-chair Gale Richards, and honorees Dr. Sylvia Rhue, Dr. Dee Mosbacher, and Judith Light with Jennifer Pizer at the Liberty Awards in Los Angeles.

Three Cousins in Concert

THREE COUSINS IN CONCERT
THREE COUSINS IN CONCERT
THREE COUSINS IN CONCERT

Jennifer Pizer with Three Cousins in Concert: Dick Morse, Richard Lindley, and Mike Lyons. The cousins hosted a welcoming reception for Lambda in Cambria, California.

Out in the Midwest

by Patricia M. Logue, MRO Managing Attorney

Lambda's 25th anniversary nationally also marks the fifth birthday in June, of our Midwest Regional Office (MRO). For five years, from our base in Chicago's Loop, Lambda's MRO has fought hard for the right of all lesbians and gay men to be safely out and proud.

Tracy Baim/Outlines-Chicago

Participating in the "Out in the Workforce" panel forum at DePaul University: (front) Tom Chiola, Cook County Judge; Mary Morten, Mayor's Liaison for Gay and Lesbian Issues; Pat Logue; (back) Sue Connolly, Northern Trust Company; Aixa Diaz, Chicago public school teacher; David Herley, Andersen Consulting; Thom Jackobs, Amoco Corporation; and Jane Icenogle, Lucent Technologies.

In our very first MRO case in 1993, *Ad Hoc Coalition of Proud Black Lesbians and Gays v. Chicago Defender*, Lambda sued on behalf of local gay and lesbian African Americans who ultimately convinced the sponsors of Chicago's Bud Billiken parade to allow them to march openly gay and proud in the country's largest African-American parade, a festival for children. In a domino effect inspired by our victory, the Association of Latin Men in Action went on to gain entrance to the Mexican- American Independence Day parade, and lesbian and gay veterans to the Veterans' Day parade.

Lambda has always recognized that an out-and-proud presence is a tremendous force for change — and a civil right. Just ask the four "dancing queens" who were literally thrown in jail for dancing together in a Harwood Heights, Illinois, bar. In 1995, in *Kleinedler v. Wolfe*, Lambda won a civil rights victory for them under the sexual-orientation provisions of the Cook County Human Rights Ordinance.

Jamie Nabozny, now off to college, has helped thousands of gay students demand their right to safe schooling. Jamie and Lambda made history in 1996, with *Nabozny v. Podlesny*, the first case ever to recognize the constitutional right of gay students to equal protection from harm in our public schools. Our appellate and trial wins for Jamie against officials at his Wisconsin school, and the clarion call of his $900,000 settlement, continue to be heard around the country. Laws have been changed, policies have been rewritten, and ears and eyes have been opened — all toward the end of making our schools and our gay children more safe.

Hundreds of lesbian and gay families now can have more security in being out and proud, thanks to little "Olivia M.," the direct beneficiary of our second-parent adoption victory in the Illinois appeals court, *Petition of K.M. and D.M.*

Lambda also has helped parents facing post-divorce custody battles with ex-spouses who threaten to play the "gay card." These Midwestern parents are safer since our precedent-setting victories for Herbert Inscoe, an openly gay Ohio father who won back custody of his children with Lambda's help in *Inscoe v. Inscoe*, and Becky Schroeder, a bisexual mother from Peoria,

continued on next page

SAVE THE DATES!

Midwest Celebrations for Lambda 25

Join supporters of the Midwest Regional Office (MRO) and celebrate our victories throughout the region — where 25-years of success can't be contained in one city!

Detroit

On March 27, Lambda client, retired **Col. Margarethe Cammermeyer**, and **Randy Block**, partner of the late Gerry Crane of Grand Rapids, Michigan, will take part in our annual Detroit event, "Michigan in March," at the elegant Detroit Club. The indefatigable Howard Israel is heading up our fabulous host committee.

Chicago

On June 11, some 600 Lambda supporters will celebrate the MRO's fifth anniversary as well as Lambda's silver anniversary as we set sail aboard the Spirit of Chicago.

Cleveland

Lambda supporters **Alex Shapiro** and **Raymond Berger** will be hosting a cocktail party in their Cleveland Heights home, joined by Cleveland Board Member **Ruth Spencer** during the month of May (date and details to be announced).

Milwaukee

On July 14, **Dr. Robert Starshak** and **Ross Draegert** will be joined by our friends from Wisconsin, for a sparkling Lambda 25 evening at their home overlooking Lake Michigan.

Don't Miss This One

Also marking Lambda's 25th anniversary, **Coretta Scott King** will deliver the Bon Foster Lecture on March 31. For details about this inspiring event, and more information about any MRO activities, call 312-663-4413, ext. 29.

The ABC'S of HIV: *Educate, Don't Discriminate!*

by Heather C. Sawyer, MRO Staff Attorney

Shortly after helping to successfully settle Lambda's challenge to the Chicago Board of Education's illegal screening of teacher applicants for HIV and other medical conditions (see Docket p. 30, *John Doe v. Chicago Board of Education*), I had brunch with friends of my parents. As I explained the important policy changes we had won, I noted a look of puzzlement on their faces. One, a longtime public school teacher, expressed her belief that questions regarding an applicant's medical condition — including whether they had HIV and how they were infected — should be allowed. She explained that a board of education needs this type of information because kids in classrooms are "so unpredictable." She further explained that she wasn't sure what a board of education would do with information regarding a teacher's HIV status, but that kids sometimes fought and might bite or spit on each other.

Her views and concerns are not unique. When I discuss this case outside of Lambda, I often encounter the belief that school administrators *should* know which teachers or students are infected with HIV. Most, like my parents' friends, cite vague concerns about transmission and scientifically unsupported scenarios, never shown to have led to HIV infection, as the basis for this belief.

Why do such misinformed views and fears about HIV persist, even among our educators? Perhaps it is because so many schools still fail to seek *or* provide accurate, comprehensive information about HIV. By advancing illegal policies based on inaccurate medical and scientific information, schools reinforce erroneous beliefs about HIV and AIDS; teachers, rather than educating about real risks of transmission and how to prevent infection, teach kids only to just "say no" to sex. With these failures, our schools abdicate a central responsibility to educate and protect our youth.

The message from this year's World AIDS Day is "give our children hope in a world with AIDS." With successes like our case against Chicago's Board of Education, we provide hope that science rather than myths ultimately will prevail, so that people with HIV/AIDS will be treated fairly in generations to come. It is time that our schools, educators, and well-intentioned people like my parents' friends, take the initiative to learn the real facts about HIV and support appropriate AIDS policies and training for teachers and students alike. Then, maybe, it will not take litigation for our schools to give our children hope. ▼

Sharon White

Heather C. Sawyer

Out... continued from previous page

Illinois, who won the first appellate custody victory for a gay parent in Illinois in *Marriage of R.S. and S.S.*

Meanwhile, we persevere in one of our earliest cases, *Equality Fdn. v. City of Cincinnati*, the five-year fight against Cincinnati's ballot measure that would strip all anti-discrimination protections from lesbians, gay men, and bisexuals. At Lambda, we recognize that the true purpose of such measures — and much of our opponents' agenda — is to send us all quavering back into the closet. As our record reflects, we have no intention of going there. ▼

Marty Grochala

Lambda Benefit with Broadway's Rent in the Windy City

The award-winning musical, Rent, drew more than 300 Lambda supporters to a sold-out benefit at Chicago's Shubert Theatre, last November 6. Adding to the night's thrills, many cast and crew members joined us and danced to The Rhythm Rockets at an after-show party at The Big Downtown. Pictured here are cast members **Manley Pope** (Roger) and **Shaun Earl** (Angel) with **Patricia Logue** (center).

On The Road, Reaching Out in The South

by Jane Morrison, SRO Managing Attorney

Now that we've set up Lambda's Southern Regional Office (SRO) in Atlanta, we're frequently leaving our new home behind as we make trails across this southeast region. Both Staff Attorney Steve Scarborough and I hit the road hard in the late fall, traveling to Florida, North Carolina, and throughout Georgia. Our message throughout the South is simple: Lambda is here for you.

Warren Davidson

On the road in Florida, Steve Scarborough and Jane Morrison (center), with Miami reception volunteer event coordinators Sue Sponnoble and Jay Novick.

In addition to responding to dozens of individuals who weekly call the SRO for legal assistance, an important part of Lambda's work in the South grows from our interactions with local organizations. Despite its reputation and general conservative political and cultural climate, the South is home to many progressive and gay groups. I find myself frequently inspired when I meet with the dedicated and courageous community activists who lead these organizations.

In Florida, we've assisted the local organization SAVE Dade (that's, Safeguarding American Values for Everyone) in its effort to pass an amendment adding sexual orientation to Dade County's anti-discrimination ordinance. In Georgia, we are working with GLSEN (Gay, Lesbian, and Straight Education Network) to distribute in Atlanta area schools Lambda's guide to ending anti-gay abuse of students. In North Carolina, I followed up Lambda's successful representation of GLASS (the Gay and Lesbian Adolescent Support System), with a trip to the state's Triad area (Greensboro/Winston/Salem) to meet with other community groups. For a range of other groups, from local Libertarian party chapters to youth conference organizers, we've provided speakers, position papers, and suggestions.

Lambda also is reaching out to local lesbian and gay lawyers' groups. Currently, only three of the nine states that make up the Southern Region have lesbian and gay bar associations. These groups, GALLA (Gay & Lesbian Lawyers Association) in South Florida, Stonewall Bar Association in Georgia, and North Carolina's GALA (Gay and Lesbian Attorneys), provide an important networking base for reaching cooperating attorneys, identifying local issues, and developing Lambda's southern case docket.

The mutual rewards of Lambda's strengthened associations with other established groups are already emerging, as we work together in the South to change the law and improve life for lesbians, gay men, and people with AIDS.

This spring, the SRO will host the Dogwood Roundtable, a forum for southern attorneys whose

continued on next page

SAVE THE DATES!

Southern Celebrations for Lambda 25

At press time, the Southern Regional Office (SRO) was getting ready to kick off Lambda 25 with a celebration in Atlanta on February 7. That same weekend, Lambda's Board of Directors will have met in Atlanta for the first time. The silver-anniversary celebration, at The Atlanta Woman's Club in Midtown, brought a congratulatory letter from **Mayor Bill Campbell**, who again welcomed the SRO to Atlanta, which remains the only southern city to offer domestic partner benefits for dependents of city employees.

Tennessee attorney, **Abby Rubenfeld**, who served as Lambda's first legal director, was scheduled to join the festivities and share stories of Lambda's experiences in the mid-eighties. Special thanks to Atlanta philanthropist **Edith Dee Cofrin**, whose $25,000 challenge grant to Lambda would be announced at this special evening.

In April, we are Miami-bound for a second Lambda 25 event in the Southern Region — date and details to be announced soon! For more information, call the SRO at 404-897-1880.

New Staff

The SRO welcomes Georgia native Alan Dowell to the staff as our new administrative assistant. Dowell received a degree in journalism with a concentration in public relations from the University of Georgia, where he was co-director of The Lesbian, Gay, Bisexual Student Union. He currently is also a facilitator for a discussion group for men in their twenties for AID Atlanta.

Lambda Helps Save Atlanta's Domestic Partner Ordinance

by Stephen R. Scarborough, SRO Staff Attorney

Stephen R. Scarborough

Surviving a protracted battle against right-wing extremists, the City of Atlanta has finally won the right to offer domestic partnership benefits to its employees. On November 3, the Georgia Supreme Court ruled against a challenge to extending the city's benefits program to those employees with dependent domestic partners. Lambda filed an *amicus* brief in support of the City, and its arguments figured prominently in the Court's opinion.

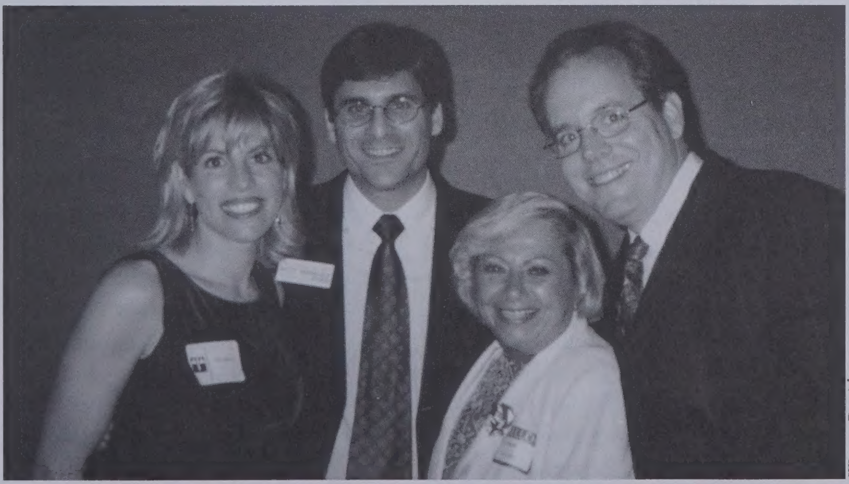
For years, Atlanta has been doggedly trying to support the committed, non-marital relationships of its gay and non-gay employees. The City Council passed both a domestic partnership ordinance and a benefits ordinance in 1993, but opponents challenged them as exceeding the City's lawmaking powers and authority to define family relationships; the state supreme court struck down that benefits ordinance. The City went back to the drawing board and a new version was adopted.

Displaying quick reflexes but not much logic, an individual sued, arguing that the City had again exceeded its authority. A trial judge, just as reflexively, agreed, but ultimately, with our help, the City showed that its new approach was reasonable and within the City's lawful powers (see Docket, p 23). Written by Lambda Managing Attorney Ruth Harlow, the brief was joined by organizations ranging from the American Federation of State, County, Municipal Employees Local 1644, and the National Employment Lawyers Association - Georgia Chapter to the Stonewall Bar Association of Georgia, the Atlanta Executive Network, and the Georgia Equality Project.

Hundreds of public and private employers across the country, wishing to remain competitive and to make equal treatment a hallmark of their personnel policies, now offer benefits to their employees' domestic partners. Unfortunately, even the ringing success in this latest round, *City of Atlanta v. Morgan,* may not be the final chapter in Atlanta's domestic partnership saga. Our adversaries have already dropped hints that they may turn to the Legislature to override the ordinance; throughout the state, *private* employers still face an arbitrary and ill-founded policy of Georgia's insurance commissioner, which declares partnership benefits unlawful unless the partners are in a "ceremonial or common law marriage." Rest assured, Lambda will continue to defend against attacks on domestic partner benefits, and to debunk the anti-gay assumptions that motivate those attacks. ▼

On the road... continued from previous page

work addresses lesbian and gay issues. This first-of-its-kind event will be an opportunity for attorneys from the nine southern states to get together and review many of the issues and challenges we have in common. Scheduled for April 24-26 (yes, when the dogwoods bloom) the event is open to all attorneys interested in advancing legal protections for the gay community. For information, contact the Southern Regional Office at 404-897-1880. ▼


Warren Davidson

At Lambda's Miami reception are Assistant State Attorney Dori Morales, Scott Bernstein, SAVE Dade Co-chair Rosemary Wilder, and County Court Judge David H. Young.

SRO Welcome from the Sunshine State!

Lambda's Southern Regional Office received a warm and sunny welcome in Miami this past November at an outreach reception in South Beach, hosted at the home of **Clark Reynolds** and **Dennis Leyva**. Local volunteers **Sue Sponnoble** and **Jay Novick** generated a large turnout for the event, including numerous leaders in the lesbian and gay as well as mainstream legal community. Dade County Commissioners **Katy Sorensen** and **Jimmy Morales** presented Lambda with a proclamation signed by Metropolitan Dade County **Mayor Alex Panelas** welcoming the SRO and proclaiming November 15, 1997, Lambda Legal Defense and Education Day in the City of Miami! ▼

Proud History of Giving

by William A. Peters, Development Director

Celebrating significant anniversaries provides an opportunity to look back on some of the considerable landmarks in an organization's history and to reflect on the advancements we have made. Lambda's 15th anniversary was celebrated at New York's Town Hall honoring the "Founders and Creators" of Lambda. In 1988, too, Lambda inaugurated the Liberty Circle level of major donors. Within six months of its inception, over 100 members had joined Liberty Circle with gifts and pledges of $1,500 and more. A year later, Lambda opened its first regional office in Los Angeles.

Michael Wakefield

Bill Peters and Lambda founder William Thom at the Liberty Circle Reception in December.

The 20th anniversary in 1993 took us to Carnegie Hall to celebrate with nearly 3000 of Lambda's closest friends and sup-porters. This year also marked the opening of the second regional office in Chicago; Liberty Circle membership by then doubled in size.

Throughout this year, the 25th anniversary is being celebrated in sixteen cities across the country. Significantly, the kickoff celebration will be in Atlanta, the home of our third regional office which opened in 1997. The celebration in New York City will be held at The United Nations. This year also marks the inauguration of the increased level of giving to the Liberty Circle. New and current Liberty Circle members were asked to start or increase their gift level to $2,500 and above, in honor of the 25th anniversary. Many of our members have taken on that challenge, much as they did ten years ago.

The thread throughout Lambda's history has been the loyal and generous support of its membership. Nearly 90% of all dollars raised for the organization come from individuals — those who start with $40 memberships; those who invest in the future of Lambda through planned giving; and those who continually volunteer their services and talents to our mission of serving lesbians, gay men and people with HIV/AIDS. Our growth and strength has, and continues to, depend on you. We have, **together**, made history. Let's celebrate! ▼

VOLUNTEERS NEEDED!

Lambda members and friends are needed to volunteer in various capacities for each city with anniversary events. If you can help, please send, **your name, address, phone number,** to: Bill Peters, development director, Lambda Legal Defense and Education Fund, 120 Wall Street, Suite 1500, New York, NY 10005. (Send e-mail to lldefny@aol.com.)

SAVE THE DATES!

National Celebrations for Lambda 25

Philadelphia

A Night on the Town in Philadelphia is planned for April 19 by Board member **Don Millinger** and a volunteer committee chaired by **Tony Ulloa** from the Delaware Valley. This unique event will consist of 30 dinner parties hosted in private homes in the Philadelphia area, with each host inviting a minimum of four people. Each guest is asked to contribute $50 that will go directly to Lambda. All hosts and guests will then convene at a central location for desserts, entertainment, and a brief presentation from Lambda program staff. For information about hosting or attending, call the Philadelphia host committee at 215-977-8896.

New York

Lambda's 25th anniversary will be celebrated with dinner and dancing at the United Nations on May 4. (See inside cover for details.)

New Jersey

The Annual New Jersey Event, to be held May 31, has a new venue for Lambda 25: LaFollette Vineyard and Winery in Belle Mead, New Jersey. With excitement building for this Lambda event, thanks to co-chairs, Board Member **Fran Goldstein** and volunteer **Bill Ruby**, New Jersey supporters gathered at Morristown's Frelinghuysen Arboretum in for a "Kick-Off" reception on January 31.

SPECIAL EVENTS

"Ragtime" Benefit January 9

Nearly three hundred New York and out-of-town Lambda supporters and staff attended a benefit performance of the hit Broadway show "Ragtime." Before the show, those with higher level tickets gathered at the elegant Princeton Club for a for cocktails and dinner.

Lambda
Legal
Defense
and Education
Fund, Inc.

25th anniversary 1973-1998

National Headquarters

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New York, NY 10005-3904
tel 212. 809. 8585
fax 212. 809. 0055

FEBRUARY 1998

Greetings --

Twenty-five years ago, when a handful of lawyers got together to create Lambda, they couldn't be sure this non-profit lesbian and gay civil rights organization -- the first ever -- would have a one-year anniversary, let alone reach the Silver Anniversary we are celebrating this year. As you can see from this new Lambda Update, there is important progress but also far to go to ensure respect under the law for lesbians and gay men, as well as for people with HIV and AIDS.

Reports in this Lambda Update include:

- our AIDS Project's response to widespread demands for mandatory HIV testing and the reporting of names of those infected. The backlash against people with AIDS or HIV ignores realities of the epidemic, including widespread needs for AIDS prevention education and the national crisis in access to quality healthcare.
- our report on Robin Shahar's employment discrimination case, which the U.S. Supreme Court last month refused to review. Shahar's case illustrates the hostility and injustice that many gay people still face in the workplace. (Notably, though polls show that a huge majority of Americans oppose anti-gay discrimination in the workplace, this problem remains one of the most frequent ones reported to Lambda's Intake lines.)
- our Marriage Project's outline of what lesbian and gay couples should consider as we prepare for the Hawaii Supreme Court to rule on whether same-sex couples should be allowed to wed. More and more supporters, gay and non-gay, have endorsed the Freedom-to-Marry Resolution -- including civil rights leaders such as Rep. John Lewis (D-Georgia) and Coretta Scott King as well as celebrities like Chita Rivera, Helen Hunt, and Paul Reiser.

Feel free to call me about any civil rights issues concerning lesbians, gay men, and people with HIV and AIDS. My number is 212-809-8585, ext. 230, and my pager is 888-987-1984.

Best regards,

Peg Byron

Peg Byron
Public Education Director

P.S. -- Hope you like the Update's fabulous makeover!

Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men and people with HIV/AIDS, through impact litigation, education and public policy work.

Proud History of Giving

by William A. [illegible], Development Director

Celebrating significant anniversaries provides an opportunity to look back on some of the remarkable landmarks in an organization's history and to reflect on the achievements we have [illegible]

Lambda 25

In honor of our 25TH Anniversary,
Lambda is celebrating with
special events across the country.
Please join us in...

FEBRUARY

Atlanta
Saturday, February 7

MARCH

Detroit
Friday, March 27

APRIL

Miami
(date to be announced)

San Francisco
Thursday, April 16

Cleveland
(date to be announced)

MAY

New York City
Monday, May 4

Dallas
(date to be announced)

New Jersey
Sunday, May 31

JUNE

Chicago
Thursday, June 11

JULY

Milwaukee
Tuesday, July 14

AUGUST

Seattle
Thursday, August 6

San Diego
Saturday, August 22

SEPTEMBER

Raleigh, NC
(date to be announced)

Philadelphia
Saturday, September 26

OCTOBER

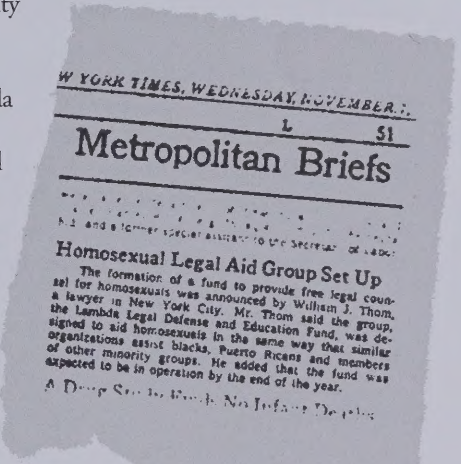
Los Angeles
Thursday, October 15

Washington, DC
(date to be announced)

Twenty-five Years Ago: 'Homosexual Aid Group Set Up'

by Peg Byron, Public Education Director

Twenty-five years ago, The New York Times printed a one-paragraph story headlined, "Homosexual Legal Aid Group Set Up." A rare mention of lesbians and gay men, it said the announcement came from a New York City lawyer, William J. Thom. "The Lambda Legal Defense and Education Fund was designed to aid homosexuals in the same way that similar organizations assist blacks, Puerto Ricans and members of other minority groups," the newspaper-of-record said.



W YORK TIMES, WEDNESDAY, NOVEMBER

Metropolitan Briefs

Homosexual Legal Aid Group Set Up

The formation of a fund to provide free legal counsel for homosexuals was announced by William J. Thom, a lawyer in New York City. Mr. Thom said the group, the Lambda Legal Defense and Education Fund, was designed to aid homosexuals in the same way that similar organizations assist blacks, Puerto Ricans and members of other minority groups. He added that the fund was expected to be in operation by the end of the year.

These days, lesbians, gay men, and Lambda itself more often are found in news reports (and less often identified in psycho-clinical terms as "homosexuals"). Although at the same time becoming a bigger target for right-wing extremists, we are increasing our impact on events and on how they are reported. Lambda is working hard to improve the quality as well as quantity of public discussion about AIDS, lesbian, and gay issues. Recent months saw Lambda's court combat and viewpoints described in news outlets from USA Today to MTV, and many others such as: Time Magazine, The Times, Washington Post, the Rocky Mountain News, Austin-American Statesman, Los Angeles Times, LA Daily Journal, Louisville, Kentucky's, Courier-Journal, Philadelphia Inquirer, Cincinnati Post, Baltimore Sun, Pacifica Radio, Court TV, Chicago's WBEZ, Tribune, Sun Times, Lesbigay Radio, Windy City Times and Outlines, Orlando Sentinal, Georgia's Fulton County Daily Journal, Village Voice, Chattanooga Free Press, Atlanta Journal-Constitution, Southern Voice, Montgomery Advertiser, Wall Street Journal, Raleigh, N.C's, New and Observer, AIDS Policy and Law, Fresno Bee, Washington and New York Blades, LGNY, Frontiers, San Francisco Examiner, SF Chronicle, Houston Chronicle, Fort Worth Star-Telegram, Memphis' Commercial Appeal, St. Louis Post Dispatch, National Law Journal, Out, the Advocate, Boston's Bay Windows and the Globe, San Francisco Bay Times, New Jersey Public television, to name a few. ▼

Lambda Launches Year-long 25th Anniversary Celebration

1998 marks Lambda's 25th anniversary as it continues its efforts to achieve equality under law for lesbians, gay men, and people with HIV/AIDS. Over 200 Liberty Circle members, guests, and staff gathered for the annual Liberty Circle Thank-You Reception last December 10, in the posh showrooms of New York City fashion designer, **Ron Chereskin**, to help launch of the year-long silver-anniversary celebration for Lambda 25. Lambda founder, The Honorable **William Thom** (now a retired New York civil court judge), was the guest speaker. ▼

Michael Wakefield

Lambda Founders and Creators Michael Lavery, William Thom, Rosalyn Richter, and D. Nicholas Russo with Kevin Cathcart at the Liberty Circle Thank-You Reception.

Lambda's Growth Gets Boost with New Deputy Director

Michael Wakefield

Surita Sandosham

Surita Sandosham has joined Lambda Legal Defense and Education Fund as its deputy director. This new position was created to strengthen management of Lambda's growing organization, which now includes regional offices in Los Angeles, Chicago, and Atlanta and a total staff nationwide of 46.

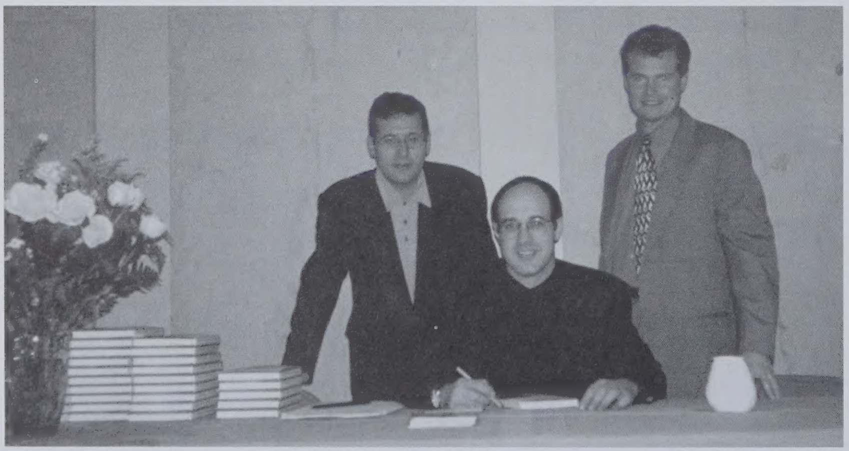
A lawyer who is qualified to practice in the United Kingdom, Singapore, and New York, Sandosham is a human-rights activist with extensive experience in senior management. She comes to Lambda after serving as president and executive director of Equality Now, an international women's rights organization. Prior to that work, she was the legal and policy advisor, and then deputy executive director for finance and administration, for Amnesty International USA.

Sandosham currently also is participating in a two-year fellowship program sponsored by the Rockefeller Foundation on enhancing American democracy.

"There is so much happening in the civil rights struggle for lesbians, gay men, and people with HIV and AIDS that I am thrilled to be working with Lambda as it takes on its many new challenges," said Sandosham, who joined the organization in its New York headquarters in the fall. Executive Director Kevin M. Cathcart said, "Surita brings a wealth of experience in managerial as well as human rights concerns to Lambda. She is enhancing our ability to grow thoughtfully and effectively."

As deputy director, Sandosham's responsibilities include coordinating the functions of the development, administration and finance, and public education departments and the regional offices. She is also responsible for leading staff in program planning, development, and evaluation. ▼

Lambda Book Signing Benefit



Board member Pedro De Armas (left) and Cory Kendall (right) hosted a benefit book signing with author Aryeh Lev Stollman for his new novel, *The Far Euphrates.*

Lambda is pleased to announce that four new Board members joined our Board of Directors in October:

Clarice Liu	Gregory G. Simoncini	Vivian Todini	George D. Tuttle
San Francisco	*Chicago*	*New York*	*San Francisco*

Lambda Legal Defense and Education Fund

STAFF

NATIONAL OFFICE

Executive Director	Kevin M. Cathcart
Deputy Director	Surita Sandosham
Legal Director	Beatrice Dohrn
Managing Attorney	Ruth E. Harlow
AIDS Project Director	Catherine Hanssens
Marriage Project Director	Evan Wolfson
Staff Attorneys	David S. Buckel Suzanne B. Goldberg
Senior Paralegal	Gillian Chi
Sr. Administrative Assistant	Jim Bachman
Administrative Assistants	Beth Feinberg Saeed Rahman
Marriage Project Assistant	Brian Jacobson
Public Education Director	Peg Byron
Education Associate	Deirdre M. Reznik
Public Info. Coordinator	Kathy Strieder
Administrative Assistant	Sam A. Lisuzzo
Development Director	William A. Peters
Assoc. Development Director	Brian Smith
Membership Manager	Jessica Dyson
Director of Administration and Finance	Louanne Marchand
Financial Manager	John L. Williams
Accounting Assistant	Carlos Baca
Executive Assistant	Peter Cameron
Receptionist	Ariel Ramerez
Systems Administrator	Tom Cook

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Supervising Attorney	Jon W. Davidson
Staff Attorney	Myron Dean Quon
Development Associate	Duane Wells
Paralegal	Nancy Pérez
Office Administrator	Wilfred A. Valle

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Staff Attorney	Heather C. Sawyer
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Development Associate	Martin Grochala
Administrative Assistant	Kharma Paige
Office Manager	Jeffrey D. McIntyre

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Staff Attorney	Stephen R. Scarborough
Administrative Assistant	Alan Dowell

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DOCKET

CASE UPDATES FROM LAMBDA LEGAL DEFENSE

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SEXUAL ORIENTATION DISCRIMINATION

ANTI-GAY INITIATIVES

EQUALITY FOUNDATION OF GREATER CINCINNATI V. CITY OF CINCINNATI
(Federal Court, Ohio)
LOSS AND APPEAL.

This is the last remaining challenge to anti-gay ballot measures similar to Colorado's Amendment 2. Armed with the U.S. Supreme Court precedent of *Romer v. Evans*, which struck down Amendment 2, Lambda is fighting for the principle that a city has no more power than a state to target gay people and prohibit legislation that promotes fairness along sexual orientation lines.

As in *Romer, Equality* challenges an anti-gay ballot initiative, Issue 3, that would repeal and bar any Cincinnati laws or policies that protect lesbians, gay men, and bisexuals from discrimination. Following *Romer*, the Supreme Court set aside the earlier ruling by the U.S. Court of Appeals for the Sixth Circuit that upheld Issue 3, and remanded the case for reconsideration. In October 1997, the Sixth Circuit again upheld the anti-gay amendment, finding that *Romer* did not apply to this case because Issue 3 is a local, rather than statewide, measure and because Issue 3 concerns "special preferences." Lambda and our co-counsel have filed a petition asking the entire Sixth Circuit to reverse the panel's ruling and strike down the Cincinnati amendment, arguing that the panel's analysis conflicts head-on with *Romer's* proclamation that "Government and each of its parts [must] remain open on impartial terms to all who seek its assistance," and reminding the court that the Supreme Court explicitly rejected the rhetoric that civil rights are "special rights."

Patricia Logue and Suzanne Goldberg are working on the case with our co-counsel Cincinnati civil rights attorney Alphonse A. Gerhardstein, who argued the case, Scott Greenwood for the ACLU of Ohio, and Ohio attorney Richard Cordray.

EMPLOYMENT

ONCALE V. SUNDOWNER OFFSHORE SERVICES, INC., ET AL
(U.S. Supreme Court)
CASE ARGUED.

In December 1997, the Supreme Court heard argument from the parties and the Solicitor General in the case. The appeal is from a ruling by the Fifth Circuit Court of Appeals that affirmed the lower court's dismissal of this sexual-harassment complaint simply because the plaintiff is a man, and so are his harassers.

The Fifth Circuit has ruled that federal law's prohibition against sexual harassment does not include same-sex sexual harassment, even harassment as blatant as Oncale's supervisor exposing his penis and placing it on Oncale's body, and also, along with two co-workers, attacking Oncale in a shower and forcing a bar of soap into his buttocks while threatening rape.

Lambda's brief urges the court to reverse the Fifth Circuit's blanket exemption of same-sex claims, and also to reject the law of several other federal circuits that sexual harassment by a person of the same sex *is* covered *if* it can be shown that the harasser is lesbian or gay. Lambda's brief, which was joined by the ACLU and nine other organizations, including a range of women's and gay groups, urges the court to reject the notion that sex or sexual orientation can dictate the availability of a remedy under a statute aimed to *eliminate* discrimination.

Our brief was written by Beatrice Dohrn, with assistance from Jennifer Middleton of the ACLU's Lesbian and Gay Rights Project.

SHAHAR V. BOWERS
(U.S. Supreme Court)

PETITION FOR U.S. SUPREME COURT REVIEW PENDING.

Lambda, along with the ACLU, has filed a petition asking the Supreme Court to consider Robin Shahar's constitutional challenge to her 1991 firing by then-Georgia Attorney General Michael Bowers.

We are seeking reversal of the full Court of Appeals for the Eleventh Circuit's ruling that Bowers did not in any way violate the Constitution when he fired Shahar from an entry-level staff attorney position, just after Bowers found that Shahar and her female partner were about to celebrate a Jewish wedding ceremony. Four judges on the twelve-person appeals court strongly dissented, agreeing with Shahar that her rights had been violated.

Our petition seeking Supreme Court review asks the Court to address the Eleventh Circuit's failure to recognize that the formation, celebration, and sustenance of Shahar's committed relationship are centrally protected by her rights of intimate and expressive association. We also urge that the court was wrong when it credited Bowers' uninvestigated speculations about Shahar's plans and about what would happen in the Department of Law if she were to start work. Finally, the petition urges that equal protection principles do not permit reliance on fear or prejudice toward lesbians and gay men to justify employment standards that differ for gay people and heterosexuals. A ruling from the Supreme Court on whether it will hear Shahar's case is expected in early 1998.

Ruth Harlow, at her prior job, and the ACLU Lesbian and Gay Rights Project initially filed suit for Shahar in 1991. The Project and Lambda are now co-counsel for Shahar. Harlow and Patricia Logue are Lambda's attorneys on the case. The ACLU's Matthew Coles, and local counsel Debra Schwartz of the Atlanta firm Stanford, Fagan and Giolito also represent Shahar.

LATE-BREAKING NEWS:

On January 12, the U.S. Supreme Court declined to review Robin Shahar's case. See article on page 7.

Lambda is helping Dan Kovatch fight employment discrimination by his former employer in California

KOVATCH V. CALIFORNIA CASUALTY MANAGEMENT CO.
(California)

NO CHANGE. AWAITING DECISION.

This case appeals a grant of summary judgment dismissing a claim of employment discrimination based on sexual orientation. Lambda joined the appeal, one of the first to test the protections provided by California's ban on sexual orientation employment discrimination.

Dan Kovatch, who had been an award-winning, top-performing employee, encountered unrelenting anti-gay comments when he transferred to the San Diego office of California Casualty Management Co. (CCMC). Kovatch had already been experiencing physical and psychological reactions to the hostile work environment and took disability leave rather than attend a meeting at which his supervisor told him to expect to be fired because he is gay. When he was able to return to work, CCMC was unwilling to transfer him out of the office where the harassment occurred. The company fired him because he would not return to that office and so had exceeded the six-month disability leave. Because there is limited appellate-level case law defining the protections afforded by California's anti-discrimination law (enacted in 1992), we are very troubled by the judge's decision to dismiss Kovatch's claims that he was constructively discharged based on his sexual orientation before a jury could hear them. Cases like this one — which present factual disputes as to what was said, when, and with what meaning conveyed — require a jury's attention. If judges are free to determine that allegations such as these are not to be taken seriously, then nondiscrimination laws will be subject to judicial veto.

In November 1996, we submitted an *amicus* brief to the California Court of Appeals in San Diego urging reversal and presenting the results of social science research documenting the deleterious effects of homophobic harassment on lesbians and gay men. Kovatch's counsel is Los Angeles practitioner Nick DeBiase. Jim Emery of San Francisco's Keker & Van Nest prepared Lambda's *amicus* brief with Jennifer Pizer.

GROBESON V. CITY OF LOS ANGELES
(California)

HEARING SCHEDULED.

These cases are part of an ongoing attempt to bring about much needed reforms in how the Los Angeles Police Department treats its lesbian and gay employees.

They spring from a ground-breaking sexual orientation employment discrimination lawsuit against the City of Los Angeles, brought by Sgt. Mitch Grobeson, the first openly gay officer in the LAPD, and settled in 1993. Grobeson filed a new suit in U.S. district court in January 1996 for violation of the prior settlement and of his federal and state constitutional rights. Portions of that suit were dismissed and then refiled in state court.

Apparently spurred by these suits, the City is funding independent experts to study and make recommendations to further combat sexual orientation discrimination in city employment. The City also recently settled similar sexual orientation employment discrimination suits filed by two former officers for $1.3 million.

Bert Voorhees, Theresa Traber, and Fernando Olguin represent Sgt. Grobeson. Lambda, through Jon Davidson, is acting in an "of counsel" capacity in connection with the lawsuit and also is assisting Grobeson's representatives in the series of disciplinary proceedings brought against him by the City, which thus far have resulted in the City suspending and fining him. Legal challenges to those disciplinary proceedings have been assigned to the same judge presiding over Grobeson's pending state court suit. At press time, a hearing on these challenges was scheduled for January 1998.

RAMOS V. COMMONWEALTH OF PUERTO RICO (Federal Court, Puerto Rico)

NO CHANGE. AWAITING DECISION.

Lambda and our co-counsel have moved for summary judgment in this case on behalf of the Gay Officers Action League (GOAL), a New York-based organization for lesbian and gay police officers. We are challenging anti-gay discrimination and harassment by the Puerto Rico Police Department (PRPD), including a PRPD disciplinary rule forbidding officers from "associating with homosexuals," as well as the harassment of GOAL members during the group's convention in San Juan in early 1995.

During the convention, PRPD officers conducted a raid on a San Juan lesbian bar hosting a reception for GOAL, on the pretext of inspecting the bar's liquor license. In addition, PRPD officers blocked GOAL from conducting a short walk on a sidewalk in the city's tourist zone that was intended to raise gay visibility. GOAL, with Dr. Rosalina Ramos Padro, a Puerto Rican lesbian activist who owned the bar at the time of the raid, have sued, alleging that these incidents and the disciplinary rule violate their rights under the constitutions of the United States andPuerto Rico and under Puerto Rico law.

Suzanne Goldberg and Ruth Harlow are working on the case. Our co-counsel is Colleen Meenan, a solo practitioner in New York. Judith Berkan, a civil rights attorney in Puerto Rico, represents Dr. Ramos.

BENEFITS

AIR TRANSPORT ASSOCIATION V. CITY AND COUNTY OF SAN FRANCISCO (California)

AWAITING DECISION.

In 1997, San Francisco became the first municipality in the country to limit the vendors and contractors it will use to those who offer benefits to their employees irrespective of marital status and sexual orientation. A trade association representing the country's major passenger airlines and freight carriers has sued in federal court seeking an order that San Francisco has no power to restrict its contracts in this way, and especially not regarding airlines. The case presents novel questions about the amount of freedom cities have to restrict those with whom it will do business to employers that share the city's commitment to principles of equality and fairness. As other cities are considering enacting similar rules concerning bidding for their public contracts, this lawsuit is being closely watched.

The trial court is now considering motions for summary judgment filed by both sides on key legal issues in the case. Lambda submitted an *amicus* brief in support of the City. The brief provides extensive background concerning the many positive benefits of such plans for both employees and employers, as well as the minimal nature of the costs and administrative burdens associated with domestic partner benefits. It also explains why the City's new contracting practice is consistent with ERISA (a federal law concerning employee benefit plans) and other federal laws. The court heard oral argument in October 1997, and a decision is expected soon.

Jennifer Pizer drafted Lambda's portion of the brief, with assistance from Cooperating Attorney Heidi Gewertz of San Francisco, and USC Law School student Jody Hoenninger. Co-*amici* include the ACLU of Northern California, the ACLU Lesbian and Gay Rights Project and the National Center for Lesbian Rights. Also working on the brief were the ACLU/NC's Kelli Evans, and Jeff Lewis and Janet Brown, ERISA specialists, of the Oakland law firm of Sigman, Lewis & Feinberg.

TANNER V. OREGON HEALTH SCIENCES UNIVERSITY (Oregon)

NO CHANGE. APPEAL PENDING.

This case tests whether Oregon law entitles state employees who are in same-sex relationships to receive health insurance and other employment benefits similar to those of their married co-workers. Plaintiffs are three lesbians who work for the Health Sciences University and their domestic partners.

Following a trial, the Oregon state court judge determined that the State's practice of limiting family benefits to married couples constitutes sex and sexual-orientation discrimination against these plaintiffs, and ordered the State to extend to the plaintiffs equal benefits. The State has appealed this decision. Lambda has submitted an *amicus* brief supporting the workers, documenting the many positive effects of extending benefits equally to employees who have domestic partners and the minimal burdens associated with doing so. Our brief also addresses the particular impact upon lesbians and gay men of employment policies that discriminate based upon marital status.

Jennifer Pizer drafted the brief jointly with ACLU of Oregon Cooperating Attorney Lynn Nakamoto of the Portland firm Markowitz, Herbold, Glade & Mehlhaf.

CITY OF ATLANTA V. MORGAN (Georgia)

VICTORY!

The Georgia Supreme Court has upheld Atlanta's domestic partner benefit policy for city employees, finally paving the way for that policy to go into effect after years of legal wrangling. The court rejected a lone city resident's effort to strike the policy based on the assertion that the City of Atlanta did not have the power to provide health insurance coverage to dependent domestic partners.

The research contained in Lambda's *amicus* brief was prominently relied upon by the court in its opinion. Numerous Georgia civil rights and employees' rights groups joined Lambda's brief as additional *amici*, including the American Federation of State, County, and Municipal Employees Local 1644, the Atlanta Executive Network, the Georgia Equality Project, the National Employment Lawyers Association-Georgia Chapter, the Service Employees International Union Local 1985, and the Stonewall Bar Association of Georgia.

Ruth Harlow wrote Lambda's brief. Mary Ann B. Oakley of Holland & Knight in Atlanta served as local counsel, and Debra Schwartz of Stanford, Fagan & Giolito in Atlanta helped coordinate *amicus* participation.

CRAWFORD V. CITY OF CHICAGO (Illinois)

PRELIMINARY VICTORY!
INJUNCTION DENIED.

This case, similar to *Morgan*, challenges the home-rule authority of the City of Chicago to enact a domestic-partner ordinance that gives benefits to qualified same-sex partners of city employees. The ordinance took effect in May and is opposed by a group of plaintiffs including conservative ministers.

Lambda represents lesbian and gay city employees Cheryl Tadin, Sandra King, and Jared Gulian who have long-time domestic partners eligible for benefits under the City's ordinance and have intervened in the lawsuit.

In September 1997, Judge Thomas Durkin of the Circuit Court of Cook County denied the ministers' motion for a preliminary injunction to block the ordinance's continued enforcement. Lambda and the City of Chicago argued strongly that under home-rule, Illinois gives its cities wide latitude in the area of employee benefits. The ordinance, an effort at equalizing employee compensation and solving the benefits gap for lesbian and gay employees, is a valid subject for the City to address through legislation. In his ruling from the bench, Judge Durkin indicated his agreement, stating that he was denying the injunction and ruling for our clients because our opponents had shown no likelihood of success on the merits of their lawsuit — strongly indicating an ultimate victory for lesbian and gay city employees. The parties are now pursuing cross-motions for summary judgment.

Patricia Logue is Lambda's attorney on the case. She is working with Cooperating Attorneys Tracey Kitzman, Joseph Miller, and Faith Gay from the Chicago office of Sidley & Austin.

Lawall v. Pima County
(Arizona)
NEW CASE!

This case, similar to *Morgan* and *Crawford*, is a challenge to the authority of Pima County, Arizona, to provide health insurance benefits to the domestic partners, and the children of domestic partners, of employees of the County.

The case was brought in July 1997 by the County Attorney for Pima County alleging that, if the plan takes effect, the board of supervisors will be spending county funds not authorized by state law. We are representing five Pima County employees who enrolled their domestic partners in the plan and who are seeking to intervene in the lawsuit, to advocate that the benefit plan not be overturned.

Jon Davidson is Lambda's attorney on the case. He is being assisted by Cooperating Attorney Pamela Liberty of the Tucson firm of Liberty, O'Neil & Bibbens.

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A.A.U.P. v. Rutgers, the State University of New Jersey
(New Jersey)
PETITION FOR N.J. SUPREME COURT REVIEW PENDING.

This lawsuit challenges the denial, by Rutgers University and the State of New Jersey, of "dependent" health insurance coverage to the partners of lesbian and gay employees. Although New Jersey provides "dependent" coverage — which includes a substantial array of health plan benefits — as part of its compensation package to married Rutgers employees who elect coverage for their spouses, it categorically denies the same benefits to unmarried employees whose partners need insurance.

In March 1997, New Jersey's Appellate Division granted judgment in favor of the State, rejecting the plaintiffs' marital status and sexual orientation discrimination claims under both the New Jersey Law Against Discrimination (LAD) and the state constitution. In particular, the court ruled that an exemption in the LAD shielded all employee benefit plans from any kind of discrimination claim and that the State's administrative convenience and cost justification sufficed to justify its obvious marital status-based criterion for benefit coverage. The plaintiffs have asked the New Jersey Supreme Court to review the case.

Lambda filed an *amicus* brief with the New Jersey Appellate Division and is preparing to file another *amicus* brief in the state's highest court if review is granted. Our position is that the New Jersey benefit scheme violates the statutory and constitutional rules against marital-status discrimination, and that the State's cost and convenience justification is factually unfounded and insufficient to justify such unequal employment benefits for its workers.

Suzanne Goldberg authored our initial *amicus* brief. NOW Legal Defense and Education Fund, the ACLU of New Jersey, and two private practitioners in New Jersey represent the plaintiffs.

MILITARY

Able v. U.S.A.
(Federal Court, New York)
APPEAL BRIEFED.

The Clinton Administration has appealed to the Second Circuit Court of Appeals, seeking reversal of District Court Judge Eugene Nickerson's insightful ruling finding "Don't Ask, Don't Tell" unconstitutional.

Judge Nickerson analyzed the government's rationale for maintaining entirely different rules of conduct for lesbian and gay service members than those applied to heterosexuals. He found that accommodating the biases of some service members provided the only basis for the code of silence and celibacy imposed on lesbians and gay men. This, he ruled, violates equal protection. We have now submitted our brief in defense of Nickerson's ruling to the appellate court.

Able is brought jointly with the ACLU. Beatrice Dohrn and Ruth Harlow are working on the case, along with Matthew Coles from the ACLU.

Cammermeyer v. U.S. Army
(Federal Court, Washington)
FINAL VICTORY!

This case challenged the military's old ban on service by lesbians and gay men. In June 1994, U.S. District Court Judge Thomas S. Zilly held the old version of the military ban unconstitutional and ordered the Army to reinstate Colonel Margarethe Cammermeyer to the Washington National Guard. Col. Cammermeyer was discharged from the military in June 1992 because she is a lesbian. A 28-year veteran of the Army and National Guard, and Chief Nurse of the Washington State National Guard, Col. Cammermeyer is the highest-ranking service member to be discharged for being lesbian or gay. Among many other honors, she received a Bronze Star for her service in Vietnam and was selected as the Veterans Administration Nurse of the Year in 1985.

Although the government did not appeal Col. Cammermeyer's right to be reinstated, it did ask the Ninth Circuit Court of Appeals to strike from the books Judge Zilly's ruling, which attacked the old ban as well as "Don't Ask, Don't Tell." The Ninth Circuit denied this request and sent the case back to Judge Zilly, who, in November 1997, refused to strike his original judgment in favor of Col. Cammermeyer. Col. Cammermeyer, who has now retired, has filed a motion for attorneys' fees, which is pending.

Former Lambda Staff Attorney Mary Newcombe continues to represent Col. Cammermeyer as cooperating attorney for Lambda. Newcombe is assisted by Lee

Michaelson; both attorneys are with Hedges & Caldwell in Los Angeles. Jon Davidson is the Lambda attorney on the case. Jeffrey Tilden and Michael Himes of the Seattle firm of Perkins Coie are co-counsel on behalf of the Northwest Women's Law Center.

Holmes v. Perry and Watson v. Perry
(Federal Court, Washington)

LOSS. PETITION FOR REHEARING EN BANC.

The plaintiffs in these consol-idated cases have sought rehearing by the full Ninth Circuit Court of Appeals. Previously, a panel of the Ninth Circuit, with one judge dissenting, upheld "Don't Ask, Don't Tell."

Holmes, a first lieutenant in the California National Guard, won his case in a California federal district court. Watson, a lieutenant in the Navy, lost in the federal district court in Seattle, Washington.

As in other appeals on the constitutionality of the ban, Lambda and the ACLU had submitted an *amicus* brief based on the theories put forward in the *Able* case. Beatrice Dohrn and the ACLU's Matthew Coles worked on the brief.

FAMILY RELATIONSHIPS

Marriage

Baehr v. Miike
(Hawaii)

AWAITING ORAL ARGUMENT.

All briefs are now before the Hawaii Supreme Court in the State's appeal of our historic victory — more than 20 twenty *amici* sub-mitted briefs. The State made a motion demanding that the court delay its consideration of the case until after the voters decide in November 1998 whether to ratify the constitutional amendment proposal passed by the legislature in tandem with the new "reciprocal beneficiaries" law. The amendment is intended to allow (although not require) the legislature to restrict marriage to different-sex couples. The court denied the State's motion for delay and may decide this case before the November 1998 ratification vote.

This breakthrough case continues to represent the most likely legal path toward winning the freedom to marry for lesbian and gay couples, even as we continue to pursue our national strategy in partnership with others in all 50 states. Judge Kevin Chang's landmark 1996 ruling found that the State of Hawaii had failed to show any compelling reason why lesbian and gay couples should be denied the freedom to marry; Judge Chang ordered an end to sex discrimination in marriage, staying his injunction to permit the State to appeal again to the state high court, which had declared the denial of marriage to same-sex couples to be sex discrimination in May 1993.

Lambda co-counsel, Honolulu attorney Dan Foley, through Marriage Project/Hawaii (formerly HERMP), is working with Evan Wolfson on the case.

Custody and Visitation

Openshaw v. Openshaw
(Alabama)

NEW CASE! One of the Southern Regional Office's first tasks will be to represent an Alabama gay man burdened by an unreasonable restriction on visitation with his children. As part of a divorce judgment, a circuit judge in Jefferson County, Alabama, has ordered Dr. Joseph Openshaw not to see his son and daughter "in the presence of anyone with whom he has a sexual relationship, to whom he is not married, including Kenny White." The order followed a trial at which witnesses testified that the children were thriving at school after being "exposed" to their father's relationship, and that they enjoyed close and caring interactions with White, his companion. An important feature of the trial, although one apparently unheeded by the court, was the debunking of an "expert" witness who insisted that the children would suffer disruption and anxiety on account of their father's sexual orientation. The "expert" admitted on the stand that he considered homosexuality an abomination and that *no* empirical studies supported his biased predictions about harm to the children. Still, the court, awarding custody to Dr. Openshaw's former wife, imposed the blanket restriction, which requires White to leave his own home every time the children visit with their father.

In attacking this restriction as unreasonable, Lambda's brief to the Alabama Court of Civil Appeals will build on case law that is slowly emerging in Alabama and other states, recognizing that a parent's sexual orientation cannot be presumed harmful to children.

Steve Scarborough is co-counsel with David Gespass and Kathleen Johnson of the firm of Gespass and Johnson in Birmingham, Alabama.

Dr. Joseph Openshaw, pictured here with his partner Kenny White, is challenging an unreasonable visitation order in Alabama.

J.A.L. v. E.P.H.
(Pennsylvania)

NO CHANGE. SECOND APPEAL FILED.

This case involves a custody and visitation dispute between two lesbian mothers who together planned for and raised a child during their nine-year relationship. Although the women initially were able to agree on a visitation schedule after their break-up, the biological mother ultimately halted all visitation between the non-biological mother and the child.

In September 1996, the Supreme Court of Pennsylvania held that J.A.L., the non-biological mother, should be allowed to seek visitation and partial custody of the child and sent the case back to the trial court. In April 1997, that court ruled against J.A.L., who is preparing an appeal.

Kim Kirkley and Beatrice Dohrn filed an *amicus* brief in the Pennsylvania Superior Court that helped bring about the favorable precedent regarding a non-biological mother's right to petition for custody and visitation, but did not participate in the trial. Former Board Member Andrew Chirls of Wolf, Block, Schorr and Solis-Cohen was local counsel on the brief. J.A.L. is represented by National Center for Lesbian Rights Cooperating Attorney Bernard Faigenbaum.

Packard v. Packard
(Florida)

POST-VICTORY REMAND PENDING.

The trial judge is reconsidering his order following Florida's First District Court of Appeals rejection of his exclusive reliance on the belief that the non-gay father would provide the "more traditional family environment." In fact, no evidence showed that the father's family (which included a new partner and her children) was more "traditional," or, more importantly, that "traditional" families are better for kids.

The appellate court remanded the case, in that it involves an initial grant of custody rather than the more common scenario where a former spouse seeks modification of an order that granted custody to a parent who later identifies as lesbian or gay. Thus, the trial court will have another opportunity to examine the children's best interests and to come to a decision regarding their custody.

Beatrice Dohrn, with the help of intern Deirdre Runnette, authored Lambda's *amicus* brief, which was joined by the Gay and Lesbian Lawyers Association of Florida. Julie Packard is represented by Jason Scott Coupal of Hollywood, Florida.

Pulliam v. Smith
(North Carolina)

NO CHANGE. AWAITING DECISION.

This is an appeal from a ruling of a North Carolina county court removing Fred Smith's two sons from his custody because he's gay and had been living with his partner for several years at the time of the trial court's decision. The ruling is replete with factual distortions, ill-supported assumptions, and homophobia. For example, the court allowed questions about and then relied on the particulars of the men's sex life. However, the mother's testimony about her sex life was deemed irrelevant. Custody of the boys, who had lived with their father their whole lives, was shifted in July 1995 when they were 7 and 9 years old.

In May 1997, the North Carolina Supreme Court heard oral argument on the appeal of the state court of appeals' decision, which found the trial court's decision to remove custody was unsupported by evidence of harm to the children caused by their father. Where there is no harm to the children, there is no basis in North Carolina law to modify an existing custody arrangement.

Beatrice Dohrn represents Smith together with Ellen Gerber and Sharon Thompson of N.C. Gay and Lesbian Attorneys (NC GALA).

Boswell v. Boswell
(Maryland)

VICTORY!
PETITION FOR REVIEW FILED.

The Maryland Court of Appeals has vacated the stringently anti-gay visitation restrictions that the trial court had imposed on this gay father. The trial court had ordered: "There is to be no overnight visitation and under no circumstances is there to be any visitation of the children with the father in the presence of [father's partner] or anyone having homosexual tendencies or such persuasions, male or female, or anyone that the father may be living with in a non-marital relationship."

There were no allegations whatsoever of misconduct or harm to the children such as to justify the radical and onerous burden imposed by the court. The children at the time of the latest ruling were 6 and 9; the father, Glenn Boswell, lives with the partner who is named in the order. Until the court imposed the limitations, they had spent considerable time together, as a family, including with overnight visits.

The appellate court's opinion does as we urged. It applies to this case the Maryland law that has long been established in cases concerning heterosexual parents. That law requires that a parent's involvement in a non-marital sexual relationship will not, in itself, affect that parent's custody or visitation. The mother has filed seeking review by Maryland's highest court.

Nancy Polikoff, family law expert and professor at American University, Washington College of Law, represented Boswell on appeal as Lambda's cooperating attorney, with assistance from Beatrice Dohrn. Andrea Colender, a private Maryland practitioner who represented Glenn Boswell prior to Lambda, continues to assist in the litigation.

Estates

Barone v. Har Jehuda Cemetery
(Pennsylvania)

VICTORY! CASE SETTLED.

This case involved a cemetery's refusal to erect a headstone with the epitaph that a lesbian wanted for her grave. The deceased, Cindy Friedman, and her life partner, Sherry Barone, fell in love as teenagers and in their twenties started a 13-year committed relationship. With Cindy's death from cancer imminent, she drew up a will and powers of attorney in an effort to make sure that Sherry would make all the important decisions for Cindy once she became incapacitated and after her death. Cindy wished her epitaph to include the words "Life Partner," but after her death the cemetery refused to comply with Sherry's directive to this effect, based on purported objections from Cindy's parents.

At the November 9, 1997, ceremony to unveil Cynthia Friedman's headstone, David Buckel and Lambda's cooperating attorney Abbe Fletman (far right) joined Cynthia's lover, Sherry Barone (middle), and friends and family. When the presiding Rabbi cut away the veil over the stone, Cynthia's loved ones were finally able to see the result of Lambda's lawsuit to compel the cemetery to honor her wish that the words "Life Partner" appear in her epitaph, a wish left unfulfilled for three years after her death.

The lawsuit was based on Sherry's clear legal authority to carry out Cindy's wishes, and it asserted that the cemetery breached its contract with Sherry. Lambda successfully settled the case. The headstone is now in place according to Cindy's wishes and Sherry's directions, and the cemetery has paid damages to Sherry for the harms caused her in an already difficult time.

David Buckel represented Barone along with Cooperating Attorney Abbe F. Fletman of Klehr, Harrison, Harvey, Branzburg & Ellers in Philadelphia.

LAMBDA 25

In 1998, Lambda celebrates its 25th anniversary as it continues to achieve equality under law for lesbians, gay men, and people with HIV/AIDS. During the past twenty-five years, Lambda has achieve an incredible record of success, winning important victories on behalf of lesbian and gay youth, couples, parents, workers, members of the military, people with HIV/AIDS, and many more.

Despite our remarkable progress in challenging discrimination, inequality of great importance remains: abuse in the nation's schools, exclusion from marriage and its benefits, no federal protection from employment discrimination, and the ever-present fear that our families are not protected, guarantee the persistence of second-class citizenship.

Help us celebrate our anniversary and continue our struggle for civil rights by rededicating your support of Lambda today.

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FIRST AMENDMENT

Southworth v. Grebe
(Federal Court, Wisconsin)
INJUNCTIVE ORDER ENTERED.
APPEAL RESUMED.

Lambda entered this case as *amicus* to protect the free speech and associational rights of all college students and to thwart this most recent in a long string of efforts to silence and disband lesbian and gay campus groups.

Several conservative law students, represented by the Virginia-based Alliance Defense Fund, filed suit to prevent the University of Wisconsin at Madison from funding certain progressive student groups, including the Lesbian, Gay and Bisexual Campus Center, with their student fees. Asserting a constitutional right not to fund speech with which they disagree, the students won a favorable decision from District Judge John Shabaz (the same judge who initially dismissed Jamie Nabozny's lawsuit).

Judge Shabaz ruled that the Center (which is apolitical and offers counseling and educational services) was advancing a "homosexual agenda" of political and ideological views and that, under the First Amendment, students cannot be forced to fund such expression. Shabaz declared the University's student group funding process unconstitutional. After an initial appeal and argument, the U.S. Court of Appeals for the Seventh Circuit in July sent the case back to the trial court for entry of a final order. In September, Judge Shabaz issued an injunction ordering the University to stop all funding of any student group engaging in political and ideological advocacy. This order was stayed and a follow-up appeal was taken.

In November, Lambda filed a second *amicus* brief to the Seventh Circuit on behalf of itself and the Center. Lambda's briefs argue that the University's means of funding student groups is a content-neutral and constitutional mechanism that furthers all students' education by encouraging a wide range of expression from many different viewpoints. The First Amendment is violated, not by the University, but by the court's attempt to force the University to censor student speech, especially on the vague and impermissible ground of political or ideological content.

Patricia Logue and Ruth Harlow co-wrote the *amicus* briefs for Lambda and the Center. The University is represented by the Attorney General of Wisconsin.

HOUSING

Phipps v. Santiago
(New York)
NEW CASE!

This case is about the unfair treatment of a lesbian couple and their family in subsidized housing. Our clients, Ivonne Santiago, Jeanette Santos, and their two children, have been a family for seven years. All four have been living in a studio apartment in income-based housing while their names have been waitlisted for a larger apartment in the same complex. Now, the landlord seeks to evict them, alleging "overcrowding." Preliminary investigation raises serious concerns about discriminatory treatment of the lesbian couple's family versus other families on the waiting lists and in "over-crowded" situations. The judge adjourned the matter for Lambda to obtain discovery.

David Buckel is representing the couple.

Jasniowski v. Rushing
(Illinois)
OPINIONS SET ASIDE ON
JURISDICTIONAL GROUNDS.

Lambda got involved in this case to ensure that lesbian, gay, and other unmarried couples are protected against discrimination under the Chicago Human Rights Ordinance and its sexual-orientation and marital-status provisions. The case threatened that ordinance with a gaping exception for discrimination based on asserted religious beliefs.

A landlord, Ron Jasniowski, refused to rent an apartment to a man and a woman who were roommates, citing religious beliefs that require him not to condone or facilitate "fornication" on his property. The Chicago Commission on Human Relations, the Circuit Court of Cook County, and the Appellate Court of Illinois all ruled that the Human Rights Ordinance protects unmarried couples from discrimination, that Jasniowski violated the Ordinance in refusing to rent to Rushing, and that his free-exercise-of-religion claim did not afford him a defense. Jasniowski petitioned the Illinois Supreme Court to take his appeal, but in a highly unusual move, the court denied that petition in October, and simultaneously entered a highly unusual supervisory order vacating the lower court decisions. In a later clarifying order the court indicated that it did so because it found there to be no case or controversy in that the tenant had never actually been denied the apartment. Attorneys for the tenant are asking the court to reconsider this order in light of record evidence to the contrary.

Lambda filed an *amicus* brief in the appellate court with the multi-member Chicago Area Fair Housing Alliance and the Spectrum Institute. Rushing is represented by Chicago Lawyers' Committee for Civil Rights Under Law and Kirkland & Ellis. The Corporation Counsel for the City of Chicago is defending the Commission on Human Relations. Patricia Logue is Lambda's attorney on this case.

Thomas, et al. v. Anchorage Equal Rights Commission, et al.
(Federal Court, Alaska)
NEW CASE. APPEAL PENDING.

This is another in the series of cases to address whether claims of interference with religious freedom can be used to eviscerate anti-discrimination laws (here, a provision of the Anchorage municipal code). Like the others, this case concerns housing discrimination; likewise, the theory involved could be used to challenge protections against discrimination in employment and public accommodations. *Thomas* was filed in federal district court in Anchorage; the appeal now underway is to the Ninth Circuit Court of Appeals.

This challenge is by two landlords, and it addresses the municipal code provision barring marital status discrimination in housing. They argue that renting to an unmarried, mixed-sex couple — who, they presume, will have sex together — would burden their personal religious practices, which forbid "facilitation" of other people's anticipated "fornication."

The trial judge agreed with the landlords' expansively phrased religious liberty claims. Weighting his opinion with footnotes cataloguing the landlords' biblical references, the judge rejected the City's arguments that government has a compelling interest in ending discrimination, and that tenants' rights of privacy and intimate association place important limits upon landlords' free-exercise rights.

We submitted an *amicus* brief supporting the City's appeal, focusing upon the extraordinarily broad nature of this exemption from Alaska's civil rights laws, and its impact upon the third parties who experience real harm from housing discrimination, whatever its motivation. In our brief, we highlight the significance of this exemption for lesbians and gay men who still cannot marry in any state. Clyde Wadsworth of Heller Ehrman White & McAuliffe prepared Lambda's brief, with assistance from Jennifer Pizer.

IMMIGRATION

In re Pitcherskaia (Federal Court, California)

REMAND BRIEFED.

We are back before the Board of Immigration Appeals (BIA) seeking asylum for Alla Pitcherskaia, a Russian lesbian who suffered and continues to fear persecution in Russia based on her sexual orientation and political opinion. The case was sent back to the BIA last June to determine whether Pitcherskaia proved her fear of persecution is well-founded, following a victory in the Ninth Circuit Court of Appeals that overturned the BIA's previous ruling that persecution was not shown where the Russian persecution of lesbians was designed to "cure" rather than punish them.

Moscow police had detained Pitcherskaia multiple times, threatened her with involuntary psychiatric hospitalization and electroshock treatment to change her sexual orientation, and refused to provide her with assistance when she was threatened by organized criminals, all on account of her being a lesbian and gay rights activist.

Suzanne Goldberg wrote the brief to the BIA, along with Lambda's co-counsel Ignatius Bau of San Francisco.

Matter of Tenorio (Board of Immigration Appeals)

NO CHANGE. AWAITING DECISION.

Marcelo Tenorio, a Brazilian gay man, is seeking asylum in the United States based on the fear that he would be persecuted or killed if he returned to his home country. In July 1993, an immigration judge granted Tenorio political asylum. The INS appealed the decision to the Board of Immigration Appeals (BIA), arguing that Tenorio failed to present sufficient evidence to prove the Brazilian government's inaction against paramilitary death squads that target gay men.

Lambda filed an *amicus* brief defending the judge's initial grant of political asylum and his evaluation of testimony presented both by Tenorio and a leader of Brazil's gay community, Luis Mott, Ph.D., who has extensively monitored the anti-gay attacks and the lack of response by police and government officials.

Suzanne Goldberg wrote Lambda's *amicus* brief to the BIA.

Matter of Yanez-Flores (Board of Immigration Appeals)

NO CHANGE. AWAITING DECISION.

This case concerns an asylum claim by Yoni Julisa Yanez-Flores, a Honduran lesbian. At age 15, while living in Honduras, Yanez-Flores was brutally gang-raped by a group of men because she is a lesbian. In Honduras, rape of a woman over age 11 is not a crime, so Yanez-Flores had no recourse against the perpetrators. She fears that, if forced to return to Honduras, she will have to remain completely invisible as a lesbian to avoid more homophobic brutality. The immigration judge in Florida, where Yanez-Flores currently resides, denied her asylum, finding that she was not suffering from persecution by non-governmental agents whom the government could not or would not control. We assert that the absence of a criminal law prohibiting rape amounts to the government's failing to control Yanez-Flores' persecutors.

Yanez-Flores has appealed to the Board of Immigration Appeals, where her case is currently pending.

Lambda joined an *amicus* brief written by Shannon Minter of the National Center for Lesbian Rights. Suzanne Goldberg is Lambda's attorney on the case.

YOUTH

Schools

Gay Youth Support Group v. Department of Defense

VICTORY!
NEW PENTAGON POLICY.

In 1996, a Department of Defense (DoD) official terminated a lesbian and gay youth support group at a DoD high school in Okinawa, Japan, based in part on "Don't Ask, Don't Tell." Lambda demanded the Pentagon reinstate the groups, reminding the government that in litigation over the military's lesbian and gay ban in *Able*, government counsel constantly asserts that the ban is justified only in the "unique circumstances of military life" and would not be tolerated among the civilian population.

In October 1997, the General Counsel of the Department of Defense contacted us and announced new "group counseling protocols" that establish non-discriminatory ground rules and that will allow for the formation of lesbian and gay youth support groups in the Pentagon's civilian high schools worldwide.

David Buckel worked on the matter.

Murrell v. School District No. 1 (Federal Court, Colorado)

AWAITING DECISION.

This case before the Tenth Circuit Court of Appeals involves a public school's liability for failing to stop boy-on-girl sexual harassment under Title IX, the federal statute that prohibits sex discrimination in federally funded schools. Lambda is supporting arguments by a female student and her family against the school district's contention that Title IX does not cover student-on-student harassment except in limited circumstances.

Title IX is of particular importance to Lambda's work on behalf of youth; the federal government recently issued new Title IX guidelines that for the first time mention "lesbian and gay students" and explain how Title IX may apply in some circumstances of anti-gay harassment in schools. The guidelines also cite the law in Lambda's *Nabozny* case as a source of broader protection.

Our *amicus* brief was authored by David Buckel and Ruth Harlow.

Wagner v. Fayetteville Public Schools (Arkansas)

NEW CASE!
INVESTIGATION PROCEEDING.

This case involves a complaint before the U.S. Department of Education's Office of Civil Rights (OCR) that the Fayetteville Public Schools violated Title IX by failing to meaningfully address the harassment of William Wagner while he was in eighth to tenth grade. Despite repeated reports to school officials by the Wagner family, William suffered more than two years of relentless abuse in classes and school hallways, including anti-gay epithets and sexual taunting. On one occasion, a teacher called William's parents anonymously to say she feared for William's safety. Ultimately, William was beaten so severely that his nose was broken in two places and his kidneys seriously injured, among many other injuries. In instances where another student initiated harassment, the school disciplined William for "reverse harassment" for answering back. His parents pulled him out of school permanently.

The complaint before OCR is under Title IX, which prohibits sex discrimination and sexual harassment in schools. Title IX applies when a school ignores harassment of a boy based on perceived "effeminacy," or in instances of sexual harassment. The Wagner's complaint is the first of its kind to proceed under the recent federal guidelines for Title IX that specifically recognize "lesbian and gay students." Lambda will encourage OCR to give the fullest meaning to its mission of equal access to education, and to explore how useful its administrative process can be.

David Buckel is representing Wagner in the administrative proceeding before the Office of Civil Rights.

SUPPORT GROUPS

GLASS v. IRS
(North Carolina)

VICTORY!
ONGOING INVESTIGATION
INTO SCOPE OF BIAS.

Seven days after receipt of Lambda's demand, the Internal Revenue Service withdrew its demand to a gay youth support group for proof that the group would not promote "homosexual attitudes" as a precondition to tax-exempt status. Thereafter, Lambda assisted GLASS with the remainder of the application process. The IRS has granted the tax exemption. These exemptions are important for groups attempting to expand their services to youth struggling with anti-gay bigotry.

In an effort to determine whether the scope of anti-gay bias at the IRS merits further attention, we have filed a Freedom of Information Act request with the agency.

David Buckel represented GLASS, with help from Steve Munro of Arnold & Porter in Washington, D.C.

Celebrate Lambda's 25TH Anniversary!
See page 19 for a list of special
events across the country.

SCOUTS

Dale v. Boy Scouts of America
(New Jersey)

AWAITING DECISION.

In December 1997, Lambda argued before the New Jersey Appellate Division, seeking reversal of the lower court ruling against our client, James Dale. An Eagle Scout, Dale was invited to become an assistant scoutmaster before the Boy Scouts (BSA) found out that he is gay and revoked his membership. Lambda filed this case in 1993, the first under New Jersey's law prohibiting sexual orientation discrimination

In a harshly worded opinion, replete with phrases such as "sodomist," "criminal," and "immorality," the lower court found that BSA is not a "public accommodation," and refused to apply the law against discrimination, and generally ignored the case law governing other discrimination claims in New Jersey. The lower court also evaded the standards established by the U.S. Supreme Court for determining when organizations are truly private and thus have first amendment protection to discriminate. Our appeal asks the intermediate court to vindicate the reach of the state law against discrimination, and apply the correct first amendment test, which says that discrimination is only permitted when it is the central purpose that brought and keeps the members of an organization together, a test the Boy Scouts clearly cannot meet.

Evan Wolfson argued the appeal and represents Dale, along with co-counsel Cleary, Gottlieb, Steen & Hamilton and the New Jersey firm of Evans, Osborne & Kreizman. A number of professional associations, religious groups, as well as gay organizations submitted *amicus* briefs in support of Dale. David Buckel has assisted in this case.

THE TELEVISED LAMBDA UPDATE

- NYC: Manhattan Cable, Thursdays, 11:00pm, Ch. 35
- NYC:Paragon Cable, Thursdays, 2:30am, Ch. 34
- Queens Public TV, Fridays, 10:00pm, Ch. 56
- Staten Island, Thursdays, 9:30pm, Ch. 35
- Washington DC, Fridays, 8:00pm, Ch. 25
- Atlanta, Mondays, 11:00pm, Ch. 12

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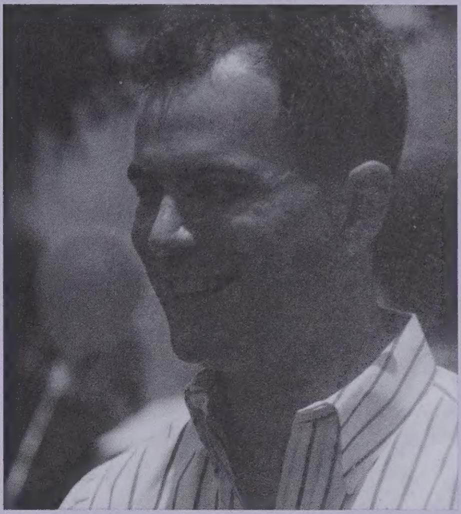

Tim Curran, plaintiff in the longest running challenge to discrimination by the Boy Scouts.

CURRAN V. MOUNT DIABLO COUNCIL OF THE BOY SCOUTS OF AMERICA
(California)

ORAL ARGUMENT HELD.
AWAITING DECISION.

Filed in 1981, this is the oldest pending challenge to the Boy Scouts' anti-gay policies. This case, brought by former Eagle Scout Tim Curran, asserts that the Boy Scouts of America's policy excluding all "known or avowed homosexuals" from membership in the Scouts violates California's law prohibiting discrimination by business establishments.

The California Supreme Court heard oral argument in January 1998. (In July 1997, the court also granted review in a further challenge to the Boy Scouts' policies brought by Chuck Merino, a gay police officer who led his police department's Explorer post, but the court ordered that case held and deferred briefing, pending decision of the *Curran* case.)

Curran is represented by Jon Davidson, who became involved when he was staff counsel at the ACLU of Southern California and continues in this case on the ACLU's behalf, along with ACLU/SC Staff Attorney Taylor Flynn. Lambda is now co-counsel.

REPRODUCTIVE RIGHTS

UNITED STATES V. LYNCH
(Federal Court, New York)

NO CHANGE. AWAITING DECISION.

The government brought suit in the fall of 1995 against two anti-choice protesters with a long history of disrupting access to a Dobbs

Ferry, New York, clinic, culminating in a May 1995 blockade. In February 1996, District Judge J. Sprizzo of the Southern District of New York entered a permanent injunction prohibiting the defendants from impeding or obstructing access to the clinic. Seven months later, the defendants violated the injunction by sitting in the clinic driveway, thus preventing several vehicles from entering the parking lot. The court found defendants in civil contempt of the injunction.

However, in January 1997, Judge Sprizzo dismissed the criminal contempt charge. The much-publicized opinion credited the defendants for acting with "sincere, genuine, objectively based and, indeed, conscience-driven religious belief." Thus, Judge Sprizzo reasoned, the defendants did not act with the requisite willfulness to sustain a criminal contempt finding. The court's holding rested on two grounds: an analogy between anti-abortion protesters and conscientious objectors, and the doctrine of jury nullification, under which a fact-finder can refuse to convict a defendant even when the facts indicate guilt.

The New York Civil Liberties Union (NYCLU) authored an *amicus* brief which Lambda joined, arguing that even though the principle of double jeopardy bars the reversal of the acquittals, the Second Circuit should reject the reasoning of Judge Sprizzo's decision. Federal and state courts across the country have repeatedly repudiated a religious defense to prosecution for criminal anti-choice activity. The failure to do so, moreover, would thwart Congress' intent in passing the Freedom of Access to Clinic Entrances Act (FACE). Congress enacted FACE to combat a widespread campaign of violence aimed at preventing health care providers from offering, and women from obtaining, reproductive health care services.

The brief was written by NYCLU attorneys Yueh-ru Chu and Donna Lieberman, with NYCLU cooperating attorney Labe Richman. It also was joined by the American Jewish Congress, the National Emergency Civil Liberties Committee and the Westchester Coalition for Legal Abortion. Beatrice Dohrn is the attorney on this case.

IN THE NEXT UPDATE, A SPECIAL REPORT:

How do bans on gay sex hurt lesbians and gay men?

What will stop these laws?

CRIMINAL LAW

WILKERSON V. MUNICIPAL COURT
(California)
NEW CASE!

This appellate proceeding, like *Chapman v. Municipal Court*, arose from lewd conduct prosecutions in which trial courts denied defendants discovery aimed at showing the disparate enforcement of the law against gay men. In response to our arguments in the *Chapman* case, the California Supreme Court in June 1997 ordered the court of appeals to decide whether the documents should be produced.

Wilkerson raises these questions again, as the L.A. City Attorney's office dismissed all criminal charges in the *Chapman* case, rendering the case moot (a move we believe the District Attorney took to evade further examination to this issue). We are handling the appellate proceedings on behalf of three men who each were arrested in an area near the L.A. airport that also is used as a "lovers' lane" by heterosexuals, who are not subjected to arrest. Our request that the court of appeals consider the reasons, founded in notions of equal protection, that this discovery should be allowed was summarily denied in November 1997. In response, we again are asking the California Supreme Court to intervene, as it did in *Chapman*, in order that the constitutional issues be fully considered and resolved.

Jon Davidson and Myron Quon are representing the petitioners in this writ proceeding, with cooperating attorneys Sean SeLegue of the San Francisco law firm of Rogers, Joseph, O'Donnell & Quinn and Henry Doering of the San Francisco Public Defender's Office. We are being assisted by Gus May of the Center for Law in the Public Interest.

BURDINE V. SCOTT
(Federal Court, Texas)
NO CHANGE. HABEAS CORPUS PROCEEDINGS UNDERWAY.

Calvin Burdine is a gay man who was convicted, after representation charitably characterized as "ineffective" (his trial counsel slept through significant portions of the trial), of capital murder. During the sentencing phase of his trial, the prosecutor urged the jury to sentence Burdine to death by arguing that sending "a homosexual to the penitentiary certainly isn't a very bad punishment for a homosexual"— implying that a gay man would enjoy being incarcerated with other men under the circumstances, including male rape, typical for a prison. The prosecutor also suggested Burdine presented a danger to the community based on Burdine's 1971 conviction for con-sensual sodomy. Burdine was sentenced to death. Shortly before Burdine was scheduled to be executed, Lambda and a group of civil rights organizations filed an *amicus* brief in support of his petition for a writ of *habeas corpus* and a stay of his execution. We argue that the prosecutor's deliberate appeal to the anti-gay prejudices of the jury, including his suggestion that gay people deserve the death penalty, violated Burdine's rights under the Eighth and Fourteenth Amendments. A federal district court judge has ordered the execution stayed and has begun further proceedings in the case.

Donna Dennis of Richard Spears Kibbe & Orbe, David Kahne of the Clark Read Civil Liberties Foundation, and Ruth Harlow authored the *amicus* brief. The National Lesbian and Gay Law Association and the Texas Human Rights Foundation also joined Lambda on the brief.

AIDS-Related Discrimination

EMPLOYMENT

JOHN DOE V. CHICAGO BOARD OF EDUCATION, ET AL.
(Federal Court, Illinois)
VICTORY!
CASE SETTLED.

Lambda won important policy changes in the Chicago public school system with the settlement of its lawsuit challenging the illegal screening of teacher applicants for HIV and AIDS, as well as other medical conditions. In settling Doe's suit on behalf of a prospective teacher with HIV, the Chicago Board of Education agreed, among other things, that it will not screen applicants for HIV; will not require medical exams or histories from any applicant prior to a conditional offer of employment; and will change its procedures for main-taining medical records in order to ensure confidentiality.

When our original "John Doe" client applied to be a teacher in the Chicago Public

Schools, the school district application asked his HIV status. After Doe confirmed that he has AIDS, his physician was required to complete an HIV-specific questionnaire that inquired about Doe's treatments, T-cell count, any opportunistic infections, as well as the manner in which he was exposed to HIV! In addition, Doe was required to submit to physical and psychiatric examinations every four months, a requirement imposed exclusively on employees with HIV.

Following Lambda's initial demand that the Chicago Board of Education eliminate inappropriate health-related and HIV-specific inquiries and physical and psychiatric monitoring of HIV-positive applicants, the Board changed its official AIDS policy to eliminate them.

Then, in response to Lambda's continuing criticisms of the application procedure for teachers, the Board further amended its medical information form to eliminate any specific reference to HIV. However, the Board continued to require a physical examination and submission of medical information (ranging from whether the applicant has "deformities" or venereal disease to whether and why the applicant takes any medications) as part of its teacher application process.

Consequently, in April 1997, Lambda filed a complaint in federal court against the Chicago Board of Education and individual officials responsible for the particular policies and practices at issue. The case was filed on behalf of a second teacher applicant who first applied for employment two years ago and was forced to disclose his HIV status at that time; the Board refused to process his application and continued to demand additional medical information from him.

Heather Sawyer represented Doe with help from cooperating attorney and Lambda Board Member Cynthia Hyndman. Catherine Hanssens also assisted.

BERNSTEL V. INGERSOLL-DRESSER
(Florida)

NEW CASE!

Lambda is assisting David Bernstel, a successful sales engineer who has filed a case in Miami federal court because he was fired when his employer learned he was HIV positive. Bernstel, who is asymp-tomatic, had earned a promotion and exem-plary performance reviews in his six-year career with Ingersoll-Dresser. He is gay, but because of a pervasively homophobic atmos-phere in the workplace he divulged neither his sexual orientation nor his HIV status. When, in 1996, he sought an increase in his life insurance coverage and submitted an HIV-related claim to Ingersoll's self-insured health plan, he was peremptorily fired for "poor performance." He has sued his former employer under the Americans with Disabilities Act (ADA) and Florida disability discrimination laws. The case is set for trial in March 1998.

In the wake of a federal appellate decision from Maryland that excluded asymptomatic HIV as a "disability" covered by the ADA, Bernstel's former employer is expected to defend by claiming he has no legal redress under that landmark statute. Lambda has taken an active role in combating this defense, demonstrating to the court that even asymptomatic HIV-positive persons suffer impairments that warrant federal protection, and that the ADA was intended to address stigma of the sort exhibited here.

Steve Scarborough is Lambda's attorney on this case, acting of counsel to David Pollack of Miami, Bernstel's private counsel.

BELL V. WELLS FARGO
(California)

AWAITING ORAL ARGUMENT.

This case challenges a state court's dismissal of an AIDS discrimination claim by an employee who filed for disability benefits after leaving work because his employer refuses or dis-continues a reasonable accommodation. The court incorrectly reasoned that once the employee claimed, on his disability application, that he was unable to work *without* the required accommodation, he would be unable to prove that he could do the job *with* the necessary accommodation. This issue is of increasing importance to people with HIV, who may be refused the flexibility they need in their work schedules to accommodate their health needs.

This case is a classic example of the double bind this misapplication of "judicial estoppel" creates. Andrew Bell, whose employer previously had accommodated his HIV-related disability with a four-day work week, including one day of telecommuting, was exceeding work requirements and receiving favorable evaluations. When a new management team revoked this accommodation, Bell couldn't hold his job. Unable to work without an accommodation that allowed him to limit his travel and office hours, Bell applied and qualified for disability benefits. The trial court concluded that Bell's receipt of disability benefits barred him from claiming protection under California's Fair Employment and Housing Act, which prohibits discrimination against those with disabilities and requires reasonable accommodations similar to the ADA. The court considers his application for disability to defeat his assertion that he is a person who is "able to perform the essential functions of the job" that he lost.

Lambda submitted an *amicus* brief in support of Bell's interlocutory appeal which was denied. In early July 1997, Lambda filed an *amicus* brief, joined by the AIDS Legal Referral Panel, the Los Angeles Center for Law and Justice, and the Western Law Center for Disability Rights, in support of Bell's appeal of the trial court's dismissal of his discrimination claim. Myron Quon, Catherine Hanssens, and Jon Davidson authored Lambda's *amicus* brief.

EMPLOYMENT-RELATED BENEFITS

PETER CASTELLANO, ET AL. V. CITY OF NEW YORK
(Federal Court, New York)

NO CHANGE. AWAITING DECISION.

This case represents the first time the Second Circuit Court of Appeals will consider whether former employees who qualify for employment-related disability benefits have standing as "qualified individuals with disabilities" to sue under the Americans with Disabilities Act when these benefits are allocated in a discrim-inatory fashion. The plaintiffs are a group of retired New York City police officers who allege that the practice of providing supple-mental payments in addition to the basic pension benefits to police who retire after twenty years of service, but not to those who are forced to retire earlier because of a disability, violates the ADA and the Rehabilitation Act.

While we took no position on the merits on these individuals' specific claims, we participated because of the great significance of the issue raised.

Lambda joined in an *amicus* brief that included the American Foundation for AIDS Research, the ACLU, and several other disabilities and employment rights organizations. Catherine Hanssens assisted on a brief drafted by New York Lawyers for the Public Interest (NYLPI) cooperating attorney Robert Schonfeld, and NYLPI attorney Ed Copeland.

HEALTH CARE WORKERS

Mauro v. Borgess Medical Center
(Federal Court, Michigan)

NO CHANGE. AWAITING DECISION.

William Mauro was a surgical technician for Borgess Medical Center in Kalamazoo, Michigan. The medical center removed Mauro from his position after rumors surfaced that he had HIV.

Mauro filed suit in federal court under the Americans with Disabilities Act and the Rehabilitation Act. The district court granted summary judgment in favor of the hospital. Despite the consensus that the risk of HIV transmission from Mauro to patients was extremely small, the court concluded that the presence of any risk, however remote, of Mauro transmitting HIV to surgical patients made him a "direct threat" to these patients and therefore not "otherwise qualified" to perform his duties as required by the ADA. Mauro brought his case to the Sixth Circuit Court of Appeals.

Without explanation, the court denied our motion to participate as *amicus* almost eight months after it was filed along with our brief, and subsequently denied our motion for reconsideration. Oral argument was held in October 1996. Catherine Hanssens and former AIDS Project Staff Attorney Barry Taylor prepared Lambda's *amicus* brief.

INSURANCE

Galanty v. The Paul Revere Life Insurance Company
(California)

APPELLATE BRIEFING UNDERWAY.

This case attacks insurance industry practices that seek to deny disability benefits to people with HIV.

Mark Galanty was HIV positive when Paul Revere sold him a disability insurance policy. For the following five years, Galanty had no symptoms of illness, continued to work, and paid premiums under the policy until a problem with his hands caused him to stop working as a court reporter. The policy included an "incontestability" clause (required by law in California) that prohibits the company from denying claims for disabilities that start more than two years after the policy is issued. To get around that clause, the insurance company claimed that Galanty's disabling condition was present when he bought the policy, because he was HIV positive. But, Galanty's disabling sickness, AIDS, did not manifest itself or cause an inability to work until five years after he bought the policy. Particularly in light of the ever-lengthening period of health and productivity that those with HIV can expect, it is very important to reverse the trend toward "disabling" those with HIV from building future security. The lawsuit includes claims for breach of contract and bad faith insurance practices. In December 1996, Los Angeles Superior Court Judge David Workman, describing this as a question of "first impression" in California, granted Paul Revere's motion for summary judgment, dismissing this case. Appellate briefing by both sides will be completed shortly.

Jon Davidson represents Galanty along with cooperating attorneys Chris Caldwell, Lee Michaelson, and former Lambda Staff Attorney Mary Newcombe, all of the Los Angeles firm of Hedges & Caldwell.

Doe v. Chubb Sovereign Insurance
(Federal Court, California)

CASE SETTLED!

The parties have resolved this lawsuit filed by Lambda on behalf of a San Francisco Bay Area couple concerning insurance underwriting practices and the Americans with Disabilities Act. The suit arose from the denial of an application for life insurance by an HIV-negative woman because her husband is HIV positive.

In November of 1996, Federal District Court Judge Vaughn Walker ruled in the case that the ADA applies to insurance underwriting practices.

Although the terms of the settlement are confidential, as part of the settlement the parties agreed to the release of a statement that, "In light of the ADA, applicants for life insurance should not be denied an insurance policy because of their association with a disabled person, including someone who is HIV positive."

Jon Davidson represented the Does with help from Cooperating Attorney Timothy Cahn of the Oakland, California, law firm known as Legal Strategies Group.

New England Mutual Life Insurance Co. v. John Doe
(New York)

NEW CASE!

This case, which parallels the *Galanty* case above, involves interpretation of a common state statutory provision that requires insurance companies' policies to specifically identify conditions they intend to exclude from coverage, and bars denials of coverage based on conditions which had existed prior to the policy but which cause disability commencing more than two years after the policy is issued. In a strategy mirrored by other insurers around the country, New England Life attempted an end-run around the law to defend its refusal to pay John Doe's AIDS-related disability claim after collecting premiums from him for five years. New England Life asserted that Doe's disabling AIDS-related condition had "manifested" itself prior to the issuance of the policy because he was HIV positive at that time. This rationale for a denial of coverage is a particular threat to people with HIV, but applies as well to policyholders who disclose results of diagnostic tests or existing medical conditions prior to the insurer's decision to issue a policy.

New England Mutual appealed after the Rockland County Supreme Court dismissed its complaint asking that Doe's AIDS-related disability be declared outside the coverage of the policy. Lambda joined the case as *amicus* to defend Doe's position on appeal. Our brief detailed for the court both the legal and larger public policy reasons supporting the trial court's decision, and why it is neither medically nor legally principled to treat HIV infection as a manifestation of AIDS to justify denial of a claim for benefits.

Catherine Hanssens worked with cooperating attorney Barry Burland, an associate with Milbank, Tweed, Hadley and McCloy, in preparing Lambda's *amicus* brief on behalf of Doe, who is represented by long-time Lambda cooperating attorney Mark Scherzer.

PUBLIC ACCOMMODATIONS

Baksh v. Human Rights Commission
(Illinois)

APPEAL BRIEFED.

In this case, a dentist appeals the Illinois Commission on Human Rights' ruling against him due to his refusal to treat, and subsequent referral of, a patient with AIDS. In June 1996, the Commission issued its decision against dentist Karim Baksh, finding that the referral of an HIV-positive patient for services that he could have provided violated the Illinois Human Rights Act. That ruling was significant in stating that the Act covers dental and medical offices as places of public accommodation that may not discriminate against persons with disabilities.

Dr. Baksh appealed the Commission's ruling, arguing, among other things, that dentists are not covered by the Act because "private" dental offices are not places of public accommodation, and that his refusal to treat an HIV-positive patient and referral of that patient to another dental clinic was appropriate treatment and not unlawful.

Lambda and the Chicago Lawyers Committee for Civil Rights Under Law, Inc. filed an *amicus* brief on behalf of the patient, who died prior to issuance of the Commission's final ruling and whose estate is represented by Roger Leishman of the ACLU of Illinois. Heather Sawyer prepared the *amicus* brief.

DOE V. ILLINOIS MASONIC MEDICAL CENTER, DR. MARTIN GREENBERG, AND HUMANA HEALTH CARE PLANS

(Illinois)

DEPARTMENT OF JUSTICE INVESTIGATION PROCEEDING.

When our client, John Doe, refused to submit to HIV testing that was not medically necessary for his treatment, his scheduled surgery was canceled and he was informed that Dr. Greenberg would not operate until Doe had been tested. After considerable effort to clarify the reasons for the testing, and after having consistently been told that the testing was necessary to ensure the safety of Dr. Greenberg and his staff, Doe contacted Lambda.

In negotiations with Dr. Greenberg, Illinois Masonic Medical Center, and Humana Health Care Plans, Lambda requested that all parties provide treatment to Doe without requiring or conditioning treatment on his submission to unnecessary HIV testing and also requested written confirmation of their policies regarding HIV testing. In response to Lambda's request, the three parties indicated that they would treat Doe in the future but refused to clarify their policies and practices regarding HIV testing generally.

To ensure that in the future neither John Doe nor any other patient would be forced to undergo unnecessary HIV testing as a precondition to receiving medical care, Lambda filed a complaint with the Department of Justice in May 1997. Investigation of that complaint is underway, as we continue negotiations with Illinois Masonic to develop an appropriate institutional policy on HIV testing of patients.

Heather Sawyer represents Doe before the Department of Justice.

CRIMINAL LAW

STATE OF MISSISSIPPI V. MARVIN MCCLENDON

(Mississippi)

NO CHANGE. AWAITING DECISION.

In October 1994, two gay men, Robert Walters and Joseph Shoemaker, were shot and killed execution-style in Laurel, Mississippi. Upon arrest, Marvin McClendon confessed to the murders, claiming that the victims sought to sexually assault him. The court permitted the defense to conduct post-mortem HIV tests on the victims, upon defense counsel's insis-tence that positive results would be "equivalent to [the victims'] carrying a loaded gun."

Lambda filed a brief in support of the Jones County District Attorney's pre-trial motion to exclude any evidence related to the victims' HIV status or sexual orientation. At the February 1995 trial, the judge ruled that the HIV status of the victims *was* relevant, and permitted defense counsel to introduce as evidence the test results of the two men. Despite this, the jury rejected the justifiable homicide defense and found the defendant guilty on two counts of murder. The defendant lost his motion for a new trial and subsequently appealed.

After consultation with Lambda, the Jones County district attorney filed a cross-appeal on the admission of the victims' HIV test results. In late 1996, the state attorney general filed its appellate brief, joined by an *amicus* brief prepared by Catherine Hanssens.

STATE V. JIMMY BIRD

(Ohio)

BRIEFS FILED.
AWAITING ORAL ARGUMENT.

In 1994, the State of Ohio sentenced Jimmy Bird to 3-to-15 years in prison for spitting because he is HIV positive. Bird has served more than two years of this sentence and, with help from Lambda, is appealing his conviction to Ohio's Supreme Court.

During a 1993 arrest for disorderly conduct, Bird allegedly spit on one of the arresting officers. Bird claims that he was maced during the arrest, spit involuntarily to clear the mace from his nose and throat, and did not intend to spit on anyone. However, because Bird is HIV positive, the State of Ohio charged him with felonious assault for spitting during the arrest. Under Ohio law, felonious assault requires that someone knowingly cause or attempt to cause physical harm by means of a "deadly weapon."

The trial court sentenced Bird to 3-to-15 years in prison for felonious assault based on the prosecution's assertion that the spit of an HIV-positive person is a "deadly weapon." Bird appealed his conviction and sentence, arguing that the trial court's acceptance of his plea was improper due to the State's failure to allege any facts establishing that Bird's spit could be a "deadly weapon." Bird lost in the appellate court but pursued his appeal to Ohio's Supreme Court. In his support, Lambda filed an *amicus* brief focusing on the state of medical knowledge regarding the risk of HIV transmission through spitting (i.e., characterized as no quantifiable risk), and arguing that a conviction such as Bird's cannot stand when the prosecution has failed to allege sufficient facts (in this case, actions that pose *any* threat of physical harm) to establish the essential elements of the charged crime.

In May 1997, the Ohio Supreme Court granted Bird's request to appeal. Lambda filed an additional *amicus* brief on Bird's behalf in August 1997, and assisted Bird's counsel in preparing his reply brief. Lambda's briefs in this case were prepared by Heather Sawyer.

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______	$90	**Anti-Gay Initiatives: Pre-Election Challenges to Anti-Gay Ballot Initiatives** *Over 1000 pages of all materials and papers filed in the challenges to anti-gay initiatives brought during the early '90s.*
______	$50	**Asylum Based on Sexual Orientation: A Resource Guide** *Over 500 pages of articles, decisions and a bibliography makes this guide the useful set of resources for asylum claims based on sexual orientation in North America. Produced with the International Gay & Lesbian Human Rights Commission.*
______	$7	**Civil Marriage for Lesbians and Gay Men: Organizing in Communities of Faith** *An interdenominational compilation of materials for clergy members and lay people who wish to contribute to the struggle to win and keep the freedom to marry. Underwritten in part by the Riverside Church.*
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Lambda Defeats Military For First Time

Excerpts from a speech by Copy Berg, July 5, 1997, Watermill, New York

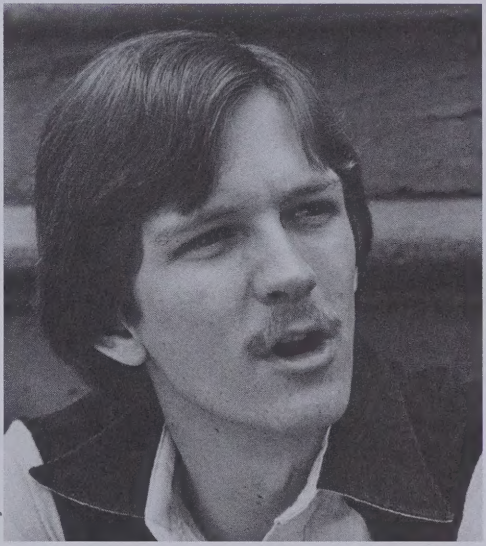
Two years ago while accepting his Lambda Liberty Award, Gerry Studds said that if we were ever discouraged about the progress that we've made we should talk to the dinosaurs of the movement to remember just how far we've come.

I present myself to you today as a dinosaur of the movement. Lambda entered my case in 1975. That's a very long time ago. That's before Anita Bryant, and before there was a functioning National Gay Anything. There were no mailing lists, no cooperating attorneys, no gay yellow pages, no word processors. The Xerox machine had been invented but we didn't have one. I typed my own briefs and all correspondence keeping copies using carbon paper. Lambda was not a functioning organization. Lambda was Bill Thom and Cary Boggan sitting in a tiny little office. We were only individuals laboring alone in sometimes harrowing isolation. My chief regret is the loss of Lambda's institutional memory. We have lost so many to AIDS that few of the original principals survive. So let me tell you something that most people don't know about the early days of Lambda.

I had just graduated from the United States Naval Academy at Annapolis, in the class of 74, and was serving on the staff of Vice Admiral Turner on the Flagship of the Sixth Fleet in the Mediterranean. The war in Viet Nam had just ended. My father died later from wounds suffered while serving in the war. And I had enlisted in the Navy in large part to avoid being drafted into the army...

I found myself in a strange position. The Pentagon didn't want me to talk about my being gay and the gay movement didn't either. Gay people, I discovered, delighted in hearing me tell all the terrible things that the military was doing to me, but nobody wanted to do anything about it. We couldn't get most people to write a letter or even pick up the phone. Funding was almost impossible. In the roaring seventies most gay men were more interested in getting laid than giving money. In those days an attorney could still be disbarred if it were known that he was a homosexual, so even lawyers wouldn't give us checks, because they were afraid the information would be traced back to them and they'd be fired.

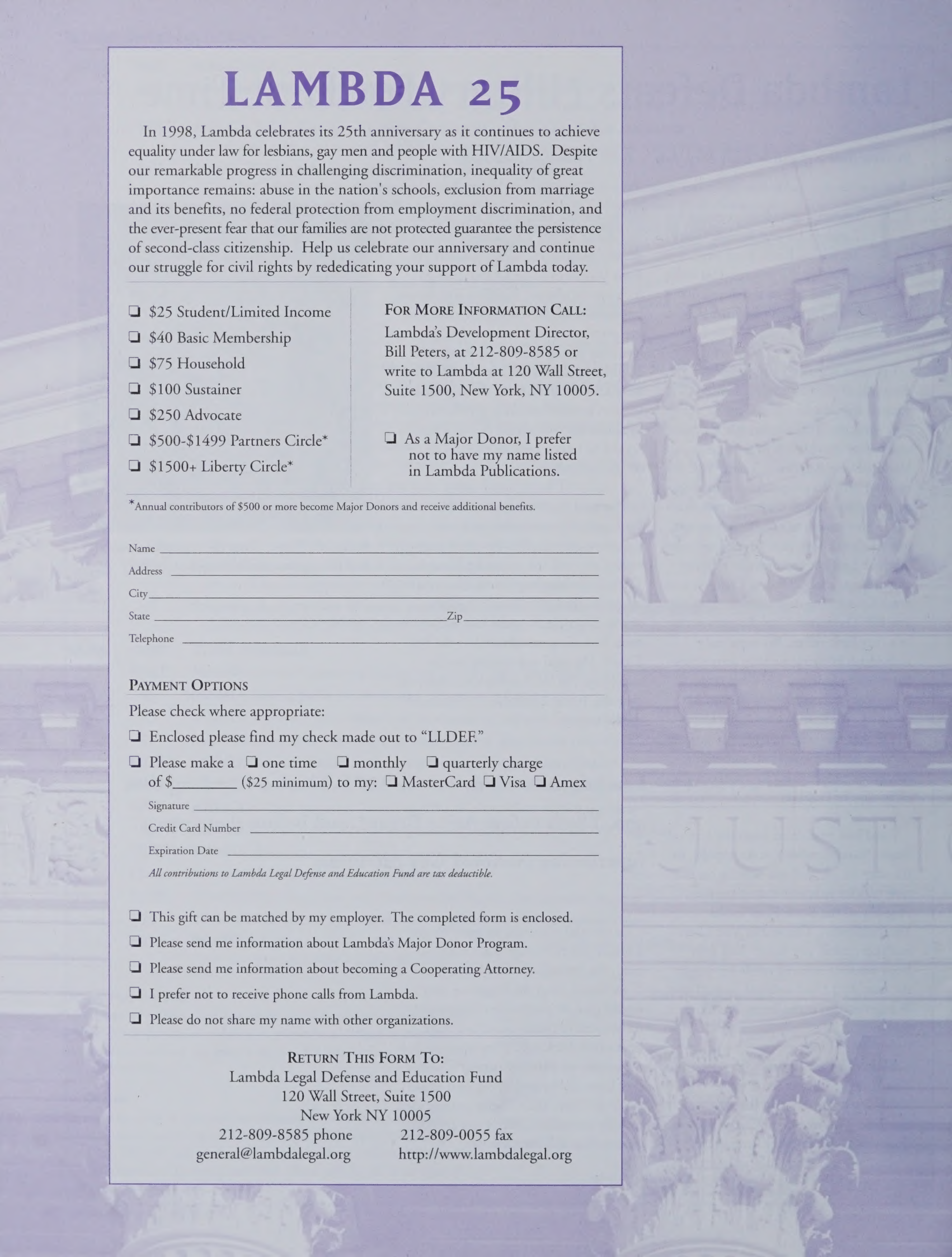
The trial itself was a circus. The Pentagon sent twelve attorneys to present their case. On the other side were Cary and me, meaning Lambda. Then everything exploded. The media swept in. And after Time magazine wrote an article, the case had a life of its own, including an editorial in the NY Times. The trial was carried on the front pages of local newspapers daily for months. It was Lambda's first national media storm.


Bettye Lane

Vernon E. "Copy" Berg, the plaintiff in Lambda's first case against the military ban, in 1977.

Lambda entered my case in 1975. That's a very long time ago. That's before Anita Bryant, and before there was a functioning National Gay Anything.

In the end what did we get? We got a major policy change that's what we got... the Pentagon offered us a deal. If we would drop the litigation they would give all people ever discharged for reasons of homosexuality a fully honorable discharge. They even made it retroactive so that any person who had ever been discharged in the past could apply and have their discharge upgraded to fully honorable...this was a Lambda victory that still stands today. ▼



LAMBDA 25

In 1998, Lambda celebrates its 25th anniversary as it continues to achieve equality under law for lesbians, gay men and people with HIV/AIDS. Despite our remarkable progress in challenging discrimination, inequality of great importance remains: abuse in the nation's schools, exclusion from marriage and its benefits, no federal protection from employment discrimination, and the ever-present fear that our families are not protected guarantee the persistence of second-class citizenship. Help us celebrate our anniversary and continue our struggle for civil rights by rededicating your support of Lambda today.

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